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Supreme Court of the United States

October Term, 1954

UNITED STATES, ex relator, GLADYS KEEFE,
Petitioner,

vs.

JOHN FOSTER DULLES,
Secretary of State, et al.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, affirming the judgment of the United States District Court for the District of Columbia, dismissing a petition for writ of habeas corpus on behalf of petitioner's husband, an American soldier imprisoned in a French prison.

OPINION BELOW

The opinion of the Court of Appeals is not yet printed. It appears in APPENDIX A to this petition. The proceedings of the District Court appears in APPENDIX A.

JURISDICTION

The judgment of the Court of Appeals was rendered September 16, 1954. Petition for rehearing was denied October 15, 1954. (See Appendix A). The time for filing this petition for writ of certiorari expires on January 15, 1955. This petition therefore is filed within time. The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

I

MAY A TREATY DESTROY THE RIGHTS OF A CITIZEN SPECIFICALLY GUARANTEED BY THE CONSTITUTION?

II

MAY THE FEDERAL COURTS PROPERLY EXAMINE THE VALIDITY OF A TREATY?

III

IS A PETITION FOR WRIT OF HABEAS CORPUS PROPER IN THIS ACTION?

IV

WAS PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS?

STATUTES, TREATIES AND RULES INVOLVED

> "Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces," 82nd Congress, 2nd Session, United States Senate Document Executive T, ratified by the United States Senate July 15, 1953. (See Appendix 1)

Article I, No. 9, Clause 2, United States Constitution provides:

> "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Article III, Section 2, United States Constitution provides:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . . "

Article VI, Clause 2, United States Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

The 5th Amendment to the United States Constitution provides:

> "No person . . . , shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; . . . "

The 8th Amendment to the United States Constitution provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment be inflicted."

The 13th Amendment to the United States Constitution provides:

"# 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

STATEMENT OF THE CASE

Petitioner is the wife of Private Richard T. Keefe, Army Serial Number 22919444.

On March 14, 1951, Richard T. Keefe enlisted in the regular Army. Prior to that he had served a tour of duty with the United States Navy and had been honorably discharged. One month following his enlistment in the regular Army. (March 14, 1951), he was sent overseas under military orders of Respondents.

On July 3, 1953, while on duty in France, Private Keefe took absence without leave. Three days later, during the night season, Private Keefe and another American soldier took a taxicab by force. Both men were placed under arrest by authorities of the French Republic in accordance with the terms of the Status of Forces Treaty, which deprived Private Keefe of his protection under the Bill of Rights and the United States Constitution.

Private Keefe was tried and convicted on October 31, 1953, by a French court, and thereby deprived of his liberty without due process of law, and in violation of the 5th Amendment Private Keefe was compelled to be a witness against himself, at the trial.

Sentence was five (5) years in a French penal institution, a term which Private Keefe is now serving.

Petition for writ of habeas corpus was filed on December 16, 1953, in the United States District Court for the District of Columbia. (page 49). On December 17, 1953, the Court issued a rule to show cause. (page 53). Respondents filed a motion to dismiss the petition and rule on December 23, 1953. (page 54). A hearing, by mutual agreement, was held on January 5, 1954. (page 75). Respondents' motion to dismiss was granted on January 13, 1954. (page 74). Notice of appeal was filed on January 15, 1954. (page 74). On September 16, 1954, the decision of District Court was affirmed by the United States Court of Appeals for the District of Columbia. (page 85). Petition for Rehearing to the Court of Appeals was filed on September 29, 1954. (page 93). On October 15, 1954, Petition for Rehearing was denied. (page 94).

The jurisdiction of the District Court was invoked under Title 28, Section 2241 (a), United States Code.

REASONS FOR GRANTING THE WRIT

The questions raised herein are of the greatest importance and significance. Treaties comparable to the one in question are being contemplated in the near future.

> (See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A CERTIFIED COPY OF THE PROTOCOL ON THE TERMINATION OF THE OCCUPATION REGIME IN THE FEDERAL REPUBLIC OF GERMANY, SIGNED AT PARIS ON OCTOBER 23, 1954, TO WHICH ARE ANNEXED FIVE SCHEDULES, AND A CERTIFIED COPY OF THE PROTOCOL TO THE NORTH ATLANTIC TREATY ON THE ACCESSION OF THE FEDERAL REPUBLIC OF GERMANY, ALSO SIGNED AT PARIS ON OCTOBER 23, 1954. THE WHITE HOUSE, NOVEMBER, 1954).

American troops today are stationed in more than sixty foreign countries, some of which are Communist controlled, and some of which can be defined as Mohammedan. Criminal procedures, laws and punishments in some of these jurisdictions are unbelievably repugnant to our constitutional protections.

The well-established principle in international jurisprudence that the Constitution follows the flag need not be traced in detail here. (*Dow* v. *Johnson,* 100 U.S. 158; *Coleman* v. *Tennessee,* 97 U.S. 509; *The Exchange,* 7 Cranch 139). Mr. Justice Fields discussed it at length in 1891. (In Re Ross, 140 U.S. 453). But if American soldiers in foreign countries are by treaty subject to trial by foreign courts and subject to foreign laws, then constitutional rights have been taken from them against their will.

This cause presents the first opportunity for this court to determine whether a treaty which departs abruptly from

accepted philosophy in international law, and, indeed, denies individual rights which are specifically provided in the Constitution, is valid under that Constitution.

And, thus, we come to our first issue.

I

MAY A TREATY DESTROY THE RIGHTS OF A CITIZEN SPECIFICALLY GUARANTEED BY THE CONSTITUTION?

Missouri v. *Holland,* 252 U.S. 416, appears to be the first Supreme Court case which, in effect, directed wide attention to the fact that the Executive branch of the government has broad powers in the field of treaty law. In that case the court upheld a law passed by Congress implementing a treaty between the United States and Great Britian which extended protection to migratory birds in the United States and Canada, after a law passed by Congress before such treaty had been made had been held unconstitutional by the lower courts. Nevertheless, the *Missouri* v. *Holland* case did not include an issue comparable to the present case. Direct denial of specific Constitutional safeguards to individuals was not involved. The Supreme Court (Mr. Justice Holmes) said (252 U.S. 416, 433):

> "The treaty is question does not contravene any prohibitory words to be found in the Constitution. The only question is whether it is forbidden by some invisible radiation from the general terms of the 10th Amendment."

In other words, the Supreme Court did not hold in *Missouri* v. *Holland* that a treaty may with impunity violate the Constitution. It held that no constitutional language had been violated by the particular treaty under considera-

tion. This is a major distinction between the instant case and *Missouri* v. *Holland*. Here the language of the Fifth and Eighth Amendments specifically forbids deprivation of liberty without due process, self incrimination in criminal cases and subjection to cruel and unusual punishment.

The reported cases before and after *Missouri* v. *Holland* have recognized the broad powers in the treaty making process. Yet running through the various opinions of the courts we find restraining notes and attitudes against treaties which attempt to do that which the Constitution forbids.

Mr. Justice Field, prior to the turn of the century, spoke for the Supreme Court in several cases involving treaties. (*Coleman* v. *Tennessee*, 97 U.S. 509; *Dow* v. *Johnson*, 100 U.S. 153; *Geofroy* v. *Riggs*, 133 U.S. 258; and others). In *Geofroy* v. *Riggs* the question was raised as to whether a citizen of France could inherit real property, located in the United States, from a citizen of the United States.

Under common law there was no "inheritable blood through which title could pass." However, a treaty between the United States and France in 1800 provided for disposal of property in Maryland to French citizens. Mr. Justice Field made the following point:

> "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids."

The Court held that the treaty provisions would be valid only in those states where state law made the treaty reciprocal.

Lord Parker of Waddington made an interesting point in *The Zamora* (Annotated Cases 1916E, 233 - PC). The case involved the seizure of contraband on a Swedish ship bound from New York to Stockholm, a neutral port. The vessel was held as Prize by His Majesty's Fleet. Lord Parker stated in his opinion:

> "The idea that the King in Council, or indeed any branch of the Executive, has power to prescribe or alter the law to be administered by the courts of law in this country is out of harmony with the prinicples of our constitution. It is true that, under a number of modern statutes, various branches of the Executive have power to make rules having the force of statutes, but all such rules deprive their validity from the Statute which creates the power, and not from the Executive body by which they are made. No one would contend that the prerogative involves any power to prescribe or alter the law administered in Courts of Common Law or Equity."

Mr. Justice Hughes said in an address before the American Society of International Law on April 26, 1929 (Digest of International Law, Vol. V, page 7) :

> "The (treaty) power is to deal with foreign nations with regard to matters of international concern. It is not a power intended to be exercised, it may be assumed, with respect to matters that have no relation to international concern."

Indeed, no possible concern, international or otherwise, can be advanced by depriving American citizens of their Constitutional rights.

On April 12, 1952, Mr. John Foster Dulles addressed a distinguished group of lawyers and judges in Louisville, Kentucky. He stated that the so-called treaty power is an

extraordinary power liable to abuse, that treaty law can cut across the rights given to the people by the Constitution and the Bill of Rights and that treaty law can override the Constitution. Mr. Dulles warned: ". . . Congressional laws are invalid if they do not conform to the Constitution, whereas treaty law can override the Constitution. Treaties, for example, can take powers away from Congress and give them to the President; they can take powers from the States and given them to the Federal government or to some international body; and they can cut across the rights given the people by the Constitutional Bill of Rights."

However, on April 6, 1953, after he had been made Secretary of State, Mr. Dulles testified before the Judiciary Committee of the United States Senate that his earlier expressed fears on the matter of treaty power were "hypothetical" since events between 1952 and 1953 had tended to check the trend toward abuse of such power.

It is the intent and purpose of this Petition to make it clear that the Status of Forces Treaty embodies every element of Constitutional violation which Mr. Dulles feared in Louisville in 1952, and to urge the Supreme Court to find such violation unconstitutional. The violation and deprivation of the Constitutional rights of Private Keefe are by no means "hypothetical". He sits today in a French prison, deprived of the protection of his flag, having been tried and convicted in a foreign court under foreign law.

The framers of the Constitution had no intention of providing such vast powers in the treaty law technique, a technique which has caused so much alarm among legislators, courts, and civic and professional groups. Surely, it requires little imagination to visualize how far the executive branch of our government could go in destroying the Constitution and in depriving American citizens of their Constitutional rights by treaty.

The erroneous and destructive concept of supremacy of treaties which provide for that which the Constitution forbids must be corrected by this Court.

II

MAY THE FEDERAL COURTS PROPERLY EXAMINE THE VALIDITY OF A TREATY?

This question has in our opinion been answered affirmatively by the Court. Prior to *Missouri* v. *Holland,* it seemed clear that the Court would invalidate a treaty which was found to be contrary to the Constitution. In *New Orleans* v. *U. S.,* 10 Pet. 662, the Court said:

> ". . . the Federal jurisdiction . . . (cannot) . . . be enlarged under treaty-making power."

Seventeen years later, in 1853, in *Doe* v. *Braden,* 16 How. 635, the Court stated:

> ". . . the courts of justice have no right to annul or disregard any of its (treaty) provisions, unless they violate the Constitution of the United States."

Article VI of the Constitution provides that treaties shall be made *under the authority of the United States.* Congress must act *in pursuance of the Constitution.* And upon this constitutional distinction rested the reasoning in *Missouri* v. *Holland* validating the treaty with Great Britain protecting migratory birds.

For this part of our argument, however, the important holding of *Missouri* v. *Holland* was that the action of the State of Missouri in attempting to enjoin through the federal courts the enforcement of an allegedly invalid treaty was a proper method to test the constitutionality of the treaty. The Supreme Court stated (252 U.S. 416, 431):

> ". . . The bill (in equity) is a reasonable and proper means to assert the alleged quasi-sovereign rights of a state. (citations) "

The Court then proceeded to determine the question of the treaty's constitutionality.

The founding fathers of this country had a reason for the language of Article VI. It was their desire to protect the country's promise in the Treaty of Peace with Great Britain concerning the recovery of British private debts contracted before the war.

The Bill of Rights stands as one of the prime results of the heated debate over Article VI. The several states foresaw in Article VI a vehicle of destruction. The Bill of Rights was the compromise.

Without proper check and balance among the Executive, Legislative, and Judicial branches of our government, as fully intended and so expressed by the framers of the Constitution, the Executive branch if current trends in treaty making could be logically extended, could control the other two branches. Undoubtedly, for this reason alone, Article III, Section 2, of the Constitution, was adopted. In this section there is provided the power granted to the Courts over " . . . Treaties made, or which shall be made, *under their authority* . . ." (Emphasis ours) Here we find the protection against treaties which go beyond the Constitution. Under this section the judicial power specifically extends over treaties made under *"authority"* of the United States. We submit that there is no doubt of the power of the federal courts to determine the constitutionality of treaties made by the United States.

III

IS THE PETITION FOR WRIT OF HABEAS CORPUS PROPER IN THIS ACTION?

Article I of the Constitution provides the privilege of the writ of habeas corpus. The only questions therefore, are whether Respondent is before the Court and whether Petitioner is within Respondent's custody.

As a member of the Armed Forces, Private Keefe is in the complete custody of the Respondents until discharged. He was sent to Europe under military order of the Respondents and must remain under the jurisdiction of Respondents until returned to native shores and there separated from the Armed Forces. No conceivable contention can be made that our military may take its men to foreign lands and there abandon them.

The Court has clearly expressed itself on many occasions on the law regarding habeas corpus. Accordingly, it is needless here to review the law on the subject, other than to point to one recent case in point: *Ex Parte Endo,* 323 U.S. 282. There the petitioner was an American citizen of Japanese ancestry and was sent, under military orders, to a relocation camp in California and later transferred to another camp in Utah. The Court held that petitioner was entitled to unconditional release. The Court said:

> "The fact that no respondent was ever served with process or appeared in the proceedings is not important. The United States resists the issuance of the writ . . .
> ". . . we are of the view that the Court may act if there is a respondent within reach of its process who has custody of the petitioner."

Here the respondents resisted the writ and thereby waived the procedural question as to the proper respondents

to be named. By filing a motion for dismissal the respondents admit the facts pleaded and question only jurisdiction.

IV

WAS PETITIONER DEPRIVED OF HIS CONSTITUTIONAL RIGHTS?

The treaty in question sets up certain alleged safeguards for the protection of American servicemen who are subject to trial on foreign soil under foreign law in Section 9 of Article VII (paragraphs (a) through (g) of the Status of Forces Treaty.) Through these paragraphs we observe an attempt to rewrite, for the convenience of the Executive branch of our Government in its treaty instrument, our most treasured Constitutional protections in criminal trial procedure.

The resolution of ratification (99 Cong. Rec. 8780 (1953)) states, in part, as follows:

> ". . . If, in the opinion of . . . (the) commanding officer . . . there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall *request* (emphasis ours) the authorities of the receiving states to waive jurisdiction in accordance with provisions of paragraph 3 (c) of Article VII."

Article VII, paragraph 3 (c), of the treaty provides that the receiving state give *sympathetic consideration* to our commanding officer's request. But we must point out that whether such request is made is a matter for decision by a single individual within his discretion.

Petitioner was required to testify against himself, contrary to the 5th Amendment of the Constitution; he was

deprived of his liberty without due process of law, as provided for in the 5th Amendment; he was subjected to cruel and unusual punishment, contrary to the 8th Amendment, in that he could have been sentenced to life and exported to a penal colony; and he is now held in involuntary servitude without having been convicted of a crime by a United States Court, contrary to the 13th Amendment.

It is important to point out that the petitioner alleged that the constitutional rights of Private Keefe had been violated. Respondent then filed a motion to dismiss the petition, which was granted by the District Court. The Court of Appeals affirmed the dismissal, stating that no proof was offered showing violation of Keefe's constitutional rights. But as stated in point III, upon a motion for dismissal the facts pleaded by the petitioner must be assumed to be true. By the District Court's action, petitioner was prohibited from proving such facts. We respectfully urge this court to correct such error.

CONCLUSION

This matter raises also a serious problem in the field of public policy. The Administration has stated repeatedly in recent months that we must prepare ourselves for a long and tedious program of self defense in the cold war world. The draft act for our military establishment will be required for a long time, raising our armed forces by conscription. Enlistments also will have to be relied upon.

Can we really expect full support of our military manpower program if it is publicly known that the Status of Forces Treaty can deprive American soldiers sent overseas of rights guaranteed by the Constitution. Perhaps, but we think not.

But if such is the effect of the Status of Forces Treaty, and that treaty is valid, we think public policy demands

that such decision be announced by the highest judicial authority in our land, this honorable court. Wherefore, for the reasons above stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX I–APPELLANT

Service Courts of Friendly Foreign Forces

1. As used in this chapter, unless the context clearly requires a different meaning–

(a) "Friendly foreign force" means any military, naval or air force of any friendly foreign state with respect to which this chapter is operative by virtue of a Presidential declaration as provided in section 706 of this title.

(b) "Service court" means any military, naval, or air force court, or court martial or similar tribunal of any friendly foreign force within the United States.

(c) "United States" means the United States, its Territories, its insular possessions, the Canal Zone, and any other place subject to the jurisdiction of the United States.

2. Upon a specific or general request of the officer commanding any friendly foreign force, having service courts of appropriate jurisdiction within the United States, it shall be lawful for any person in the civil, military, or naval establishments of the United States having authority to arrest, summarily to arrest any member of such force designated in such request and to deliver him to the custody of any officer of such force or to the custody of the military or naval authorities of the United States who shall deliver him forthwith to the custody of an officer of such force, for trial in such service courts within the United States for such offenses as shall lie within the jurisdiction of the service courts of such friendly foreign force: Provided, That the trial of any member of such friendly foreign force for an offense against a member of the civilian population shall be in open court (except where security consideration forbids), shall take place promptly in the United States and

within a reasonable distance from the place where the offense is alleged to have been committed, for the convenience of witnesses.

3. (a) Any district court of the United States, or the United States courts of any Territory or possession, or the United States District Court for the District of Columbia, within the jurisdiction of which proceedings are had before any service court of a friendly foreign force, or within the jurisdiction of which any person is found, shall have jurisdiction, upon application made by a service court of a friendly foreign force, to issue to such person an order requiring him to appear before the service court or an officer designated to take a deposition for use before such service court and there to produce evidence or give testimony if so ordered. Any failure to obey such order of the court may be punished by said court as a contempt thereof: Provided, That the fees of such witnesses and the mileage at the rate allowed to witnesses attending the courts of the United States should be duly paid or tendered in advance to such witnesses, with funds to be supplied by the friendly foreign force. Except as expressly permitted by the court, in its discretion, no such order shall run into any other district.

(b) Attendance of witnesses in the armed services of the United States shall be obtained by request addressed to the discretion of the commanding officer of the person whose testimony is required.

(c) Persons subject to the jurisdiction of the United States, who are not members of a friendly foreign force, who shall give false testimony or shall commit any act in the presence of a service court of a friendly foreign force, which, if committed before a court of the United States, would be

in contempt thereof, shall upon conviction by a court of the United States be fined not more than $2,000 or imprisoned for not more than six months, or both.

4. Members of any service court of a friendly foreign force lawfully exercising jurisdiction in the United States in relation to members of such force, and any witnesses appearing before such service court, shall enjoy the same immunities and privileges as are enjoyed by members of a court martial of the United States and by witnesses appearing before such a court martial.

5. Persons sentenced to imprisonment by a service court of a friendly foreign force may be confined in disciplinary barracks, guardhouses, or other places of detention of the United States armed forces or in penitentiaries or other institutions employed by the United States for the detention or treatment of prisoners, at the expense of the state on whose behalf the prisoner is detained.

6. This chapter shall be operative with respect to the military, naval, or air forces of any foreign state only after a finding and declaration by the President that the powers and privileges provided in this chapter are necessary for the maintenance of discipline. The President may at any time revoke such finding and declaration.

Proclamation No. 2626, Oct. 12, 1944, 9 F. R. 12403.

Activation by President.

Now Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested in me by said act of June 30, 1944 (this section), do find and declare that the powers and privileges provided in that act to implement the jurisdiction of courts martial or other military tribunals of friendly foreign forces

within the United States are necessary for the maintenance of discipline of the military, naval, or air forces of the United Kingdom and Canada with the United States. Rules and Regulations, June 30, 1944, Stat. 644, Title 22 USCA § 701 to 706, inclusive.

SENATE

82d Congress
2*d Session*

Executive
T

AGREEMENT BETWEEN THE PARTIES TO THE NORTH ATLANTIC TREATY REGARDING THE STATUS OF THEIR FORCES

The Parties to the North Atlantic Treaty signed in Washington on 4th April, 1949,

Considering that the forces of one Party may be sent, by arrangement, to serve in the territory of another party;

Bearing in mind that the decision to send them and the conditions under which they will be sent, in so far as such conditions are not laid down by the present Agreement, will continue to be the subject of separate arrangements between the Parties concerned;

Desiring, however, to define the status of such forces while in the territory of another Party;

Have agreed as follows:

ARTICLE I

1. In this Agreement the expression—

(*a*) "force" means the personnel belonging to the land, sea or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connection

with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units or formations shall not be regarded as constituting or included in a "force" for the purposes of the present Agreement;

(*b*) "civilian component" means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located;

(*c*) "dependent" means the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her support;

(*d*) "sending State" means the Contracting Party to which the force belongs;

(*e*) "receiving State" means the Contracting Party in the territory of which the force or civilian component is located, whether it be stationed there or passing in transit;

(*f*) "military authorities of the sending State" means those authorities of a sending State who are empowered by its law to enforce the military law of that State with respect to members of its forces or civilian components;

(*g*) "North Atlantic Council" means the Council established by Article 9 of the North Atlantic Treaty or any of its subsidiary bodies authorized to act on its behalf.

2. This Agreement shall apply to the authorities of political subdivisions of the Contracting Parties, within their territories to which the Agreement applies or extends in accordance with Article XX, as it applies to the central authorities of those Contracting Parties, provided, however, that property owned by political sub-divisions shall not be considered to be property owned by a Contracting Party within the meaning of Article VIII.

ARTICLE II

It is the duty of a force and its civilian component and the members thereof as well as their dependents to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of the present Agreement, and, in particular, from any political activity in the receiving State. It is also the duty of the sending State to take necessary measures to that end.

ARTICLE III

1. On the conditions specified in paragraph 2 of this Article and subject to compliance with the formalities established by the receiving State relating to entry and departure of a force or the members thereof, such members shall be exempt from passport and visa regulations and immigration inspection on entering or leaving the territory of a receiving State. They shall also be exempt from the regulations of the receiving State on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territories of the receiving State.

2. The following documents only will be required in respect of members of a force. They must be presented on demand:

(*a*) personal identity card issued by the sending State showing names, dates of birth, rank and number (if any), service, and photograph;

(*b*) individual or collective movement order, in the language of the sending State and in the English and French languages, issued by an appropriate agency of the sending State or of the North Atlantic Treaty Organisation and certifying to the status of the individual or group as a member or members of a force and

to the movement ordered. The receiving State may require a movement order to be countersigned by its appropriate representative.

3. Members of a civilian component and dependents shall be so described in their passports.

4. If a member of a force or of a civilian component leaves the employ of the sending State and is not repatriated, the authorities of the sending State shall immediately inform the authorities of the receiving State, giving such particulars as may be required. The authorities of the sending State shall similarly inform the authorities of the receiving State of any member who has absented himself for more than twenty-one days.

5. If the receiving State has requested the removal from its territory of a member of a force or civilian component or has made an expulsion order against an ex-member of a force or of a civilian component or against a dependent of a member or ex-member, the authorities of the sending State shall be responsible for receiving the person concerned within their own territory or otherwise disposing of him outside the receiving State. This paragraph shall apply only to persons who are not nationals of the receiving State and have entered the receiving State as members of a force or civilian component or for the purpose of becoming such members, and to the dependents of such persons.

ARTICLE IV

The receiving State shall either

(*a*) accept as valid, without a driving test or fee, the driving permit or licence or military driving permit issued by the sending State or a sub-divison thereof to a member of a force or of a civilian component; or

(*b*) issue its own driving permit or license to any member of a force or civilian component who holds a driving permit or license or military driving permit issued by the sendng State or a sub-division thereof, provided that no driving test shall be required.

ARTICLE V

1. Members of a force shall normally wear uniform. Subject to any arrangement to the contrary between the authorities of the sending and receiving States, the wearing of civilian dress shall be on the same conditions as for members of the forces of the receiving State. Regularly constituted units or formations of a force shall be in uniform when crossing a frontier.

2. Service vehicles of a force or civilian component shall carry, in addition to their registration number, a distinctive nationality mark.

ARTICLE VI

Members of a force may possess and carry arms, on condition that they are authorized to do so by their orders. The authorities of the sending State shall give sympathetic consideration to requests from the receiving State concerning this matter.

ARTICLE VII

1. Subject to the provisions of this Article,

(*a*) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

(*b*) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2.—(*a*) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with repect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(*b*) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

(*c*) For the purposes of this paragraph and of paragraph 3 of this Article a security offense against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defense of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(*a*) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

(i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;

(ii) offences arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the state having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

5.—(*a*) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(*b*) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(*c*) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6.—(*a*) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(*b*) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7.—(*a*) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

(*b*) The authorties of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquited, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

(*a*) to a prompt and speedy trial;

(*b*) to be informed, in advance of trial, of the specific charge or charges made against him;

(*c*) to be confronted with the witnesses against him;

(*d*) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;

(*e*) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;

(*f*) if he considers it necessary, to have the services of a competent interpreter; and

(*g*) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial.

10.—(*a*) Regularly constituted military units or formations of a force shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the receiving State. The military police of the force may take all appropriate measures to ensure the maintenance of order and security on such premises.

(*b*) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the force.

11. Each Contracting Party shall seek such legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of other Contracting Parties, and the punishment of persons who may contravene laws enacted for that purpose.

ARTICLE VIII

1. Each Contracting Party waives all its claims against any other Contracting Party for damages to any property owned by it and used by its land, sea or air armed services, if such damage—

(i) was caused by a member or an employee of the armed services of the other Contracting Party in the execution of his duties in connexion with the operation of the North Atlantic Treaty; or

(ii) arose from the use of any vehicle, vessel or aircraft owned by the other Contracting Party and used by its armed services, provided either that the vehicle, vessel or aircraft causing the damage was being used in connexion with the operation of the North Atlantic Treaty, or that the damage was caused to property being so used.

Claims for maritime salvage by one Contracting Party against any other Contracting Party shall be waived, provided that the vessel or cargo salvaged was owned by a Contracting Party and being used by its armed services in connexion with the operation of the North Atlantic Treaty.

2.—(*a*) In the case of damage caused or arising as stated in paragraph 1 to other property owned by a Contracting Party and located in its territory, the issue of the liability of any other Contracting Party shall be determined and the amount of damage shall be assessed, unless the Contracting Parties concerned agree otherwise, by a sole arbitrator selected in accordance with sub-paragraph (*b*) of this

paragraph. The arbitrator shall also decide any counter-claims arising out of the same incident.

(*b*) The arbitrator referred to in sub-paragraph (*a*) above shall be selected by agreement between the Contracting Parties concerned from amongst the nationals of the receiving State who hold or have held high judicial office. If the Contracting Parties concerned are unable, within two months, to agree upon the arbitrator, either may request the Chairman of the North Atlantic Council Deputies to select a person with the aforesaid qualifications.

(*c*) Any decision taken by the arbitrator shall be binding and conclusive upon the Contracting Parties.

(*d*) The amount of any compensation awarded by the arbitrator shall be distributed in accordance with the provisions of paragraph 5 (*e*) (i), (ii) and (iii) of this Article.

(*e*) The compensation of the arbitrator shall be fixed by agreement between the Contracting Parties concerned and shall, together with the necessary expenses incidental to the performance of his duties, be defrayed in equal proportions by them.

(*f*) Nevertheless, each Contracting Party waives its claim in any such case where the damage is less than:—

Belgium: B. fr. 70,000.
Canada: $1,460.
Denmark: Kr. 9,670.
France: F. fr. 490,000.
Iceland: Kr. 22,800.
Italy: Li. 850,000.
Luxembourg: L. fr. 70,000.
Netherlands: Fl. 5,320.
Norway: Kr. 10,000.
Portugal: Es. 40,250.
United Kingdom: £500.
United States: $1,400.

Any other Contracting Party whose property has been damaged in the same incident shall also waive its claim up to the above amount. In the case of considerable variation in the rates of exchange between these currencies the Contracting Parties shall agree on the appropriate adjustments of these amounts.

3. For the purposes of paragraphs 1 and 2 of this Article the expression "owned by a Contracting Party" in the case of a vessel includes a vessel on bare boat charter to that Contracting Party or requisitioned by it on bare boat terms or seized by it in prize (except to the extent that the risk of loss or liability is borne by some person other than such Contracting Party).

4. Each Contracting Party waives all its claims against any other Contracting Party for injury or death suffered by any member of its armed services while such member was engaged in the performance of his official duties.

5. Claims (other than contractual claims and those to which paragraphs 6 or 7 of this Article apply) arising out of acts or omissions of members of a force or civilian component done in the performance of official duty, or out of any other act, omission or occurrence for which a force or civilian component is legally responsible, and causing damage in the territory of the receiving State to third parties, other than any of the Contracting Parties, shall be dealt with by the receiving State in accordance with the following provisions:—

(*a*) Claims shall be filed, considered and settled or adjudicated in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its owned armed forces.

(*b*) The receiving State may settle any such claims, and payment of the amount agreed upon or determined by adjudication shall be made by the receiving State in its currency.

(*c*) Such payment, whether made pursuant to a settlement or to adjudication of the case by a competent tribunal of the receiving State, or the final adjudication by such a tribunal denying payment, shall be binding and conclusive upon the Contracting Parties.

(*d*) Every claim paid by the receiving State shall be communicated to the sending States concerned together with full particulars and a proposed distribution in conformity with sub-paragraphs (e) (i), (ii) and (iii) below. In default of a reply within two months, the proposed distribution shall be regarded as accepted.

(*e*) The cost incurred in satisfying claims pursuant to the preceding sub-paragraph and paragraph 2 of this Article shall be distributed between the Contracting Parties, as follows:—

(i) Where one sending State alone is responsible, the amount awarded or adjudged shall be distributed in the proportion of 25 per cent, chargeable to the receiving State and 75 per cent chargeable to the sending State.

(ii) Where more than one State is responsible for the damage, the amount awarded or adjudged shall be distributed equally among them: however, if the receiving State is not one of the States responsible, its contribution shall be half that of each of the sending States.

(iii) Where the damage was caused by the armed services of the Contracting Parties and it is not possible to attribute it specifically to one or more of those armed services, the amount awarded the Contracting Parties concerned: however, if the receiving State is

not one of the States by whose armed services the damage was caused, its contribution shall be half that of each of the sending States concerned.

(iv) Every half-year, a statement of the sums paid by the receiving State in the course of the half-yearly period in respect of every case regarding which the proposed distribution on a percentage basis has been accepted, shall be sent to the sending States concerned, together with a request for reimbursement. Such reimbursement shall be made within the shortest possible time, in the currency of the receiving State.

(*f*) In cases where the application of the provisions of sub-paragraphs (*b*) and (*e*) of this paragraph would cause a Contracting Party serious hardship, it may request the North Atlantic Council to arrange a settlement of a different nature.

(*g*) A member of a force or civilian component shall not be subject to any proceedings for the enforcement of any judgment given against him in the receiving State in a matter arising from the performance of his official duties.

(*h*) Except in so far as sub-paragraph (*e*) of this paragraph applies to claims covered by paragraph 2 of this Article, the provisions of this paragraph shall not apply to any claim arising out of or in connection with the navigation or operation of a ship or the loading, carriage, or discharge of a cargo, other than claims for death or personal injury to which paragraph 4 of this Article does not apply.

6. Claims against members of a force or civilian component arising out of tortious acts or omissions in the receiving State not done in the performance of official duty shall be dealt with in the following manner:—

(*a*) The authorities of the receiving State shall consider the claim and assess compensation to the claimant in a fair and just manner, taking into account all the

circumstances of the case, including the conduct of the injured person, and shall prepare a report on the matter.

(*b*) The report shall be delivered to the authorities of the sending State, who shall then decide without delay whether they will offer an *ex gratia* payment, and if so, of what amount.

(*c*) If an offer of *ex gratia* payment is made, and accepted by the claimant in full satisfaction of his claim, the authorities of the sending State shall make the payment themselves and inform the authorities of the receiving State of their decision and of the sum paid.

(*d*) Nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against a member of a force or of a civilian component unless and until there has been payment in full satisfaction of the claim.

7. Claims arising out of the unauthorised use of any vehicle of the armed services of a sending State shall be dealt with in accordance with paragraph 6 of this Article, except in so far as the force or civilian component is legally responsible.

8. If a dispute arises as to whether a tortious act or omission of a member of a force or civilian component was done in the performance of official duty or as to whether the use of any vehicle of the armed services of a sending State was unauthorised, the question shall be submitted to an arbitrator appointed in accordance with paragraph 2 (*b*) of this Article, whose decision on this point shall be final and conclusive.

9. The sending State shall not claim immunity from the jurisdiction of the courts of the receiving State for members of a force or civilian component in respect of the civil jurisdiction of the courts of the receiving State except to the extent provided in paragraph 5 (*g*) of this Article.

10. The authorities of the sending State and of the receiving State shall co-operate in the procurement of evidence for a fair hearing and disposal of claims in regard to which the Contracting Parties are concerned.

ARTICLE IX

1. Members of a force or of a civilian component and their dependents may purchase locally goods necessary for their own consumption, and such services as they need, under the same conditions as the nationals of the receiving State.

2. Goods which are required from local sources for the subsistence of a force or civilian component shall normally be purchased through the authorities which purchase such goods for the armed services of the receiving State. In order to avoid such purchases having any adverse effect on the economy of the receiving State, the competent authorities of that State shall indicate, when necessary, any articles the purchase of which should be restricted or forbidden.

3. Subject to agreements already in force or which may hereafter be made between the authorised representatives of the sending and receiving States, the authorities of the receiving State shall assume sole responsibility for making suitable arrangements to make available to a force or a civilian component the buildings and grounds which it requires, as well as facilities and services connected therewith. These agreements and arrangements shall be, as far as possible, in accordance with the regulations governing the accommodation and billeting of similar personnel of the receiving State. In the absence of a specific contract to the contrary, the laws of the receiving State shall deter-

mine the rights and obligations arising out of the occupation or use of the buildings, grounds, facilities or services.

4. Local civilian labour requirements of a force or civilian component shall be satisfied in the same way as the comparable requirements of the receiving State and with the assistance of the authorities of the receiving State through the employment exchanges. The conditions of employment and work, in particular wages, supplementary payments and conditions for the protection of workers, shall be those laid down by the legislation of the receiving State. Such civilian workers employed by a force or civilian component shall not be regarded for any purposes as being members of that force or civilian component.

5. When a force or a civilian component has at the place where it is stationed inadequate medical or dental facilities, its members and their dependents may receive medical and dental care, including hospitalisation, under the same conditions as comparable personnel of the receiving State.

6. The receiving State shall give the most favourable consideration to requests for the grant to members of a force or of a civilian component of travelling facilities and concessions with regard to fare. These facilities and concessions will be the subject of special arrangements to be made between the Governments concerned.

7. Subject to any general or particular financial arrangements between the Contracting Parties, payment in local currency for goods, accomodation and services furnished under paragraphs 2, 3, 4 and, if necessary, 5 and 6, of this Article shall be made promptly by the authorities of the force.

8. Neither a force, nor a civilian component, nor the members thereof, nor their dependents, shall by reason of

this Article enjoy any exemption from taxes or duties relating to purchases and services chargeable under the fiscal regulations of the receiving State.

ARTICLE X

1. Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or on any tangible moveable property the presence of which in the receiving State is due solely to the temporary presence there.

2. Nothing in this Article shall prevent taxation of a member of a force or civilian component with respect to any profitable enterprise, other than his employment as such member, in which he may engage in the receiving State, and, except as regards his salary and emoluments and the tangible movable property referred to in paragraph 1, nothing in this Article shall prevent taxation to which, even if regarded as having his residence or domicile outside the territory of the receiving State, such a member is liable under the law of that State.

3. Nothing in this Article shall apply to "duty" as defined in paragraph 12 of Article XI.

4. For the purposes of this Article the term "member of a force" shall not include any person who is a national of the receiving State.

ARTICLE XI

1. Save as provided expressly to the contrary in this Agreement, members of a force and of a civilian component as well as their dependents shall be subject to the laws and regulations, administered by the customs authorities of the receiving State. In particular the customs authorities of the receiving State shall have the right, under the general conditions laid down by the laws and regulations of the receiving State, to search members of a force or civilian component and their dependents and to examine their luggage and vehicles, and to seize article pursuant to such laws and regulations.

2.—(*a*) The temporary importation and the re-exportation of service vehicles of a force or civilian component under their own power shall be authorised free of duty on presentation of a triptyque in the form shown in the Appendix to this Agreement.

(*b*) The temporary importation of such vehicles not under their own power shall be governed by paragraph 4 of this Article and the re-exportation thereof by paragraph 8.

(*c*) Service vehicles of a force or civilian component shall be exempt from any tax payable in respect of the use of vehicles on the road.

3. Official documents under official seal shall not be subject to customs inspection. Couriers, whatever their status, carrying these documents must be in possession of an individual movement order issued in accordance with paragraph 2 (*b*) of Article III. This movement order shall show the number of despatches carried and certify that they contain only official documents.

4. A force may import free of duty the equipment for the force and reasonable quantities of provisions, supplies and

other goods for the exclusive use of the force and, in cases where such use is permitted by the receiving State, its civilian component and dependents. This duty-free importation shall be subject to the deposit, at the customs office for the place of entry, together with such customs documents as shall be agreed, of a certificate in a form agreed between the receiving State and the sending State signed by a person authorised by the sending State for that purpose. The designation of the person authorised to sign the certificates as well as specimens of the signatures and stamps to be used, shall be sent to the customs administration of the receiving State.

5. A member of a force or civilian component may, at the time of his first arrival to take up service in the receiving State or at the time of the first arrival of any dependent to join him, import his personal effects and furniture free of duty for the term of such service.

6. Members of a force or civilian component may import temporarily free of duty their private motor vehicles for the personal use of themselves and their dependents. There is no obligation under this Article to grant exemption from taxes payable in respect of the use of roads by private vehicles.

7. Imports made by the authorities of a force other than for the exclusive use of that force and its civilian component, and imports, other than those dealt with in paragraphs 5 and 6 of this Article, effected by members of a force or civilian component are not, by reason of this Article, entitled to any exemption from duty or other conditions.

8. Goods which have been imported duty-free under paragraphs 2 (*b*), 4, 5 or 6 above—

(*a*) may be re-exported freely, provided that, in the case of goods imported under paragraph 4, a certificate, issued in accordance with that paragraph is presented to the customs office: the customs authorities, however, may verify that goods re-exported are as described in the certificate, if any, and have in fact been imported under the conditions of paragraph 2 (*b*), 4, 5 or 6 as the case may be;

(*b*) shall not normally be disposed of in the receiving State by way of either sale or gift: however, in particular cases such disposal may be authorised on conditions imposed by the authorities concerned of the receiving State (for instance, on payment of duty and tax and compliance with the requirements of the controls of trade and exchange.

9. Goods purchased in the receiving State shall be exported therefrom only in accordance with the regulations in force in the receiving State.

10. Special arrangements for crossing frontiers shall be granted by the customs authorities to regularly constituted units or formations, provided that the customs authorities concerned have been duly notified in advance.

11. Special arrangements shall be made by the receiving State so that fuel, oil and lubricants for use in service vehicles, aircraft and vessels of a force or civilian component, may be delivered free of all duties and taxes.

12. In paragraphs 1-10 of this Article—

"duty means customs duties and all other duties and taxes payable on importation or exportation, as the case may be, except dues and taxes which are no more than charges for services rendered;

"importation" includes withdrawal from customs warehouses or continuous customs custody, provided that the goods concerned have not been grown, produced or manufactured in the receiving State.

13. The provisions of this Article shall apply to the goods concerned not only when they are imported into or exported from the receiving State, but also when they are in transit through the territory of a Contracting Party, and for this purpose the expression "receiving State" in this Article shall be regarded as including any Contracting Party through whose territory the goods are passing in transit.

ARTICLE XII

1. The customs or fiscal authorities of the receiving State may, as a condition of the grant of any customs or fiscal exemption or concession provided for in this Agreement, require such conditions to be observed as they may deem necessary to prevent abuse.

2. These authorities may refuse any exemption provided for by this Agreement in respect of the importation into the receiving State of articles grown, produced or manufactured in that State which have been exported therefrom without payment of, or upon repayment of, taxes or duties which would have been chargeable but for such exportation. Goods removed from a customs warehouse shall be deemed to be imported if they were regarded as having been exported by reason of being deposited in the warehouse.

ARTICLE XIII

1. In order to prevent offences against customs and fiscal laws and regulations, the authorities of the receiving and of the sending States shall assist each other in the conduct of enquiries and the collection of evidence.

2. The authorities of a force shall render all assistance within their power to ensure that articles liable to seizure by, or on behalf of, the customs or fiscal authorities of the receiving State are handed to those authorities.

3. The authorities of a force shall render all assistance within their power to ensure the payment of duties, taxes and penalties payable by members of the force or civilian component or their dependents.

4. Service vehicles and articles belonging to a force or to its civilian component, and not to a member of such force or civilian component, seized by the authorities of the receiving State in connection with an offence against its customs or fiscal laws or regulations shall be handed over to the appropriate authorities of the force concerned.

ARTICLE XIV

1. A force, a civilian component and the members thereof, as well as their dependents, shall remain subject to the foreign exchange regulations of the sending State and shall also be subject to the regulations of the receiving State.

2. The foreign exchange authorities of the sending and the receiving States may issue special regulations applicable to a force or civilian component or the members thereof as well as to their dependents.

ARTICLE XV

1. Subject to paragraph 2 of this Article, this Agreement shall remain in force in the event of hostilities to which the North Atlantic Treaty applies, except that the provisions for settling claims in paragraphs 2 and 5 of Article VIII shall not apply to war damage, and that the provisions of the Agreement, and, in particular of Articles III and VII, shall immediately be reviewed by the Contracting Parties concerned, who may agree to such modifications as they may consider desirable regarding the application of the Agreement between them.

2. In the event of such hostilities, each of the Contracting Parties shall have the right, by giving 60 days' notice to the other Contracting Parties, to suspend the application of any of the provisions of this Agreement so far as it is concerned. If this right is exercised, the Contracting Parties shall immediately consult with a view to agreeing on suitable provisions to replace the provisions suspended.

ARTICLE XVI

All differences between the Contracting Parties relating to the interpretation or application of this Agreement shall be settled by negotiation between them without recourse to any outside jurisdiction. Except where express provision is made to the contrary in this Agreement, differences which cannot be settled by direct negotiation shall be refered to the North Atlantic Council.

ARTICLE XVII

Any Contracting Party may at any time request the revision of any Article of this Agreement. The request shall be addressed to the North Atlantic Council.

ARTICLE XVIII

1. The present Agreement shall be ratified and the instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which shall notify each signatory State of the date of deposit thereof.

2. Thirty days after four signatory States have deposited their instruments of ratification the present Agreement

shall come into force between them. It shall come into force for each other signatory State thirty days after the deposit of its instrument of ratification.

3. After it has come into force, the present Agreement shall, subject to the approval of the North Atlantic Council and to such conditions as it may decide, be open to accession on behalf of any State which accedes to the North Atlantic Treaty. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America, which shall notify each signatory and acceding State of the date of deposit thereof. In respect of any State on behalf of which an instrument of accession is deposited, the present Agreement shall come into force thirty days after the date of the deposit of such instrument.

ARTICLE XIX

1. The present Agreement may be denounced by any Contracting Party after the expiration of a period of four years from the date on which the Agreement comes into force.

2. The denunciation of the Agreement by any Contracting Party shall be effected by a written notification addressed by that Contracting Party to the Government of the United States of America which shall notify all the other Contracting Parties of each such notification and the date of receipt thereof.

3. The denunciation shall take effect one year after the receipt of the notification by the Government of the United States of America. After the expiration of this period of one year, the Agreement shall cease to be in force as regards the Contracting Party which denounces it, but shall continue in force for the remaining Contracting Parties.

ARTICLE XX

1. Subject to the provisions of paragraphs 2 and 3 of this Article, the present Agreement shall apply only to the metropolitan territory of a Contracting Party.

2. Any State may, however, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification given to the Government of the United States of America that the present Agreement shall extend (subject, if the State making the declaration considers it to be necessary, to the conclusion of a special agreement between that State and each of the sending States concerned), to all or any of the territories for whose international relations it is responsible in the North Atlantic Treaty area. The present Agreement shall then extend to the territory or territories named therein thirty days after the receipt by the Government of the United States of America of the notification, or thirty days after the conclusion of the special agreements if required, or when it has come into force under Article XVIII, whichever is the later.

3. A State which has made a declaration under paragraph 2 of this Article extending the present Agreement to any territory for whose international relations it is responsible may denounce the Agreement separately in respect to that territory in accordance with the provisions of Article XIX.

In witness whereof the undersigned Plenipotentiaries have signed the present Agreement.

Done in London this nineteenth day of June, 1951, in the English and French languages, both texts being equally authoritative, in a single original which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America

shall transmit certified copies thereof to all the signatory and acceding States.

For the Kingdom of Belgium:
Obert de Thieusies.
For Canada:
L. D. Wilgress.
For the Kingdom of Denmark:
Steensen-Leth.
For France:
Herve Alphand.
For Iceland:
Gunnlauger Petursson.
For Italy:
A. Rossi-Longhi.
For the Grand Duchy of Luxembourg:
A. Clasen.
For the Kingdom of the Netherlands:
A. W. L. Tjarda van Starkenborgh-Stachouwer.
For the Kingdom of Norway:
Dag Bryn.
For Portugal:
R. Ennes Ulrich.

The Agreement is only applicable to the territory of Continental Portugal, with the exclusion of the Adjacent Islands and the Overseas Provinces.

For the United Kingdom of Great Britain and Northern Ireland:
Herbert Morrison.
For the United States of America:
Charles M. Spofford.

I certify that the foregoing is a true copy of the agreement between the parties to the North Atlantic Treaty

regarding the status of their forces which was signed in the English and French languages at London on June 19, 1951, the signed original of which is deposited in the archives of the Government of the United States of America.

In testimony whereof, I Dean Acheson, Secretary of State of the United States of America, have hereunto caused the seal of the Departmnt of State to be affixed and my name subscribed by the authentication officer of the said department, at the City of Washington, in the District of Columbia, this seventeenth day of July, 1951.

Dean Acheson,
Secretary of State.

(Seal)

By M. P. Chauvin,
Authentication Officer,
Department of State.

RESOLUTION OF RATIFICATION, WITH RESERVATIONS, AS AGREED TO BY THE SENATE ON JULY 15, 1953

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive T, Eighty-second Congress, second session, an agreement between the parties to the North Atlantic Treaty Regarding the Status of their Forces, signed at London on June 19, 1951.

It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed preju-

dicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States.

In giving its advice and consent to ratification, it is the sense of the Senate that:

1. The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;

2. Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

3. If, in the opinion of such commanding officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall request the authorities of the receiving state to waive jurisdiction in accordance with the provisions of paragraph 3 (c) of Article VII (which requires the receiving state to give "sympathetic consideration" to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives;

4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving state will attend the trial of any such person by the authorities of a receiving state under the agreement, and any failure

to comply with the provisions of paragraph 9 of Article VII of the agreement shall be reported to the commanding officer of the armed forces of the United States in such state who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives.

APPENDIX II

9 Filed Dec. 16, 1953

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Habeas Corpus No. 145-53

Address of Petitioner: 5310 Hamilton Street,
Riverdale, Maryland.

United States ex Relator, Gladys Keefe, Petitioner,
v.
John Foster Dulles, Secretary of State, State Department,
Washington 25, D. C.,
Charles E. Wilson, Secretary of Defense, Pentagon,
Washington 25, D. C.,
and
Robert B. Stevens, Secretary of the Army, Pentagon,
Washington 25, D. C.,
Respondents.

Petition for Writ of Habeas Corpus

To the Honorable, the Judge of the United States District Court for the District of Columbia:

The Relator, Gladys Keefe, above named, respectfully represents:

1. That she is the wife of Richard Thomas Keefe, senior, Army Serial Number 29 919 444 and resides at 5310 Hamilton Street, Riverdale, Maryland.

2. That Richard Thomas Keefe, senior, Army Serial Number 22 919 444 is now illegally under arrest, restraint, detained and deprived of his liberty by the above named respondents who have jointly conspired to and acting through their agents, servants or employees, actually have deprived the said Richard Thomas Keefe of his liberty, in a "Maison de Correction" at Orleans, France.

3. The said arrest, restraint, detention and deprivation of liberty of Richard Thomas Keefe, senior, Army Serial Number 22 919 444 by Respondent's agents, servants or employees purports, as Relator is informed and therefore believes, to be under and pursuant to Article VIII of a purported treaty known as 'Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces', proclaimed by the President under the date of October 27, 1953. Said Article purports to confer upon a foreign nation the jurisdiction to bring to trial according to their laws and judicial procedure, members of the armed forces of the United States who may be on duty within or stationed within such foreign country. Relator is informed and therefore believes that the said deprivation of liberty of Richard Thomas Keefe, senior, Army Serial Number 22 919 444 was and is brought about by an alleged trial of him by a French court on October 31, 1953, for the offense of "Robbery", i.e., taking a civilian taxicab by force, and for which he was sentenced to confinement for a term of five (5) years.

4. That the restraint and imprisonment of Richard Thomas Keefe, senior, Army Serial Number 22 919 444, are illegal in that the purported jurisdiction in the said Treaty violates the guarantees given to American citizens,

including those who like Richard Thomas Keefe, a citizen of the United States, serve abroad in the Armed Forces of the United States, by the Constitution of the United States of America and the Amendments thereto. The said Treaty being repugnant to the Constitution of the United States of America is null and void and of no effect, whatever.

5. That the said purported Treaty specifically violates the Constitution of the United States of America in that:

a. Richard Thomas Keefe, senior, Army Serial Number 22 919 444, was deprived of his liberty, without due process of law as guaranteed to him by the 5th amendment, Constitution, U.S., in that he was subjeced to a trial whose process, procedure and law is foreign to the United States of America.

b. Under the procedure by which Richard Thomas Keefe, senior, Army Serial Number 22 919 444, was tried and sentenced, Relator is informed and therefore believes, that he could be and was compelled to be a witness against himself contrary to the 5th Amendment, Constitution, U.S.

c. Under the procedure by which Richard Thomas Keefe, senior, Army Serial Number 22 919 444, was tried, Relator is informed and therefore believes, that he could have been sentenced to exportation to a penal colony, a cruel and unusual punishment by the standards of the United States which is prohibited by the 8th Amendment, Constitution, U.S.

d. Under the procedure by which Richard Thomas Keefe, senior, Army Serial Number 22 919 444, was deprived of his liberty, he now as a member of the Armed Forces of the United States of America and under the jurisdiction of the United States acting through the Respondents, exists in a condition of involuntary servitude without having been duly convicted in any court of the United States of America which violates the 13th Amendment, Constitution, U.S.

6. That the Respondent, John Foster Dulles, Secretary of State, could have and can now by representations to the Government of France, under well recognized principles of International Law, effect the return of Richard Thomas Keefe, senior, Army Serial Number 22 919 444 to his station and duty under the Respondents, Charles E. Wilson and Robert B. Stevens.

7. That Respondent Robert B. Stevens acting under the direction of Respondent Charles E. Wilson has, although Richard Thomas Keefe, senior, Army Serial Number 22 919 444, is a member of the Armed Forces under their jurisdiction and while the said Keefe is unlawfully deprived of his liberty for a governmental purpose of the United States, to wit: in order to improve relations with foreign countries by sacrificing the Constitutional rights of members of the Armed Forces serving abroad as specified above, without any justification or excuse terminated the $136.00 per month allotment payable to your Relator for her support and the maintenance of her two (2) minor children, namely Richard Thomas Keefe, junior, age 3 and James Lawrence Keefe, age 2, which monthly payment, your Relator is informed and therefore believes, is an allotment to which she is entitled under congressional enactment.

Wherefore, Relator prays:

1. That a Writ of Habeas Corpus be granted and issued, directed to the said John Foster Dulles, Charles E. Wilson, Robert B. Stevens, jointly and severally, commanding them to produce the body of Richard Thomas Keefe, senior, Army Serial Number 22 919 444, before your Honor or a judge of this Court, at a time and place therein to be specified, then and there to receive and do what shall be ordered herein in that behalf, or

2. In the alternative for a rule to show cause why such Writ should not issue.

3. That Richard Thomas Keefe, senior, Army Serial Number 22 919 444, be restored to his liberty.

4. For such other and further relief as to the Court may seem just and proper.

GLADYS KEEFE
Gladys Keefe.

* * *

13 Filed Dec. 17, 1953

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Habeas Corpus No. 145-53

Ex Rel. Gladys Keefe, Petitioner,

v.

John Foster Dulles, et al., Respondent.

Order Directing Respondent to Show Cause

It is this 17th day of December, 1953,

It Is Further Ordered that the respondent either in person or by counsel appear in the Court on or before the fifth day after service of a copy of this order and of the petition upon him and make return to said petition and show cause, if any he has why the Writ of Habeas Corpus should not issue.

It IS Further Ordered that the respondent serve on the petitioner by mail a copy of his answer to this rule.

David A. Pine
Judge

* * *

14 Filed Dec. 23, 1953

Motion to Dismiss the Petition and Discharge the Order to Show Cause

Comes now the respondents by their attorney Leo A. Rover, the United States Attorney in and for the District of Columbia, and moves this Honorable Court to dismiss the petition for a writ of habeas corpus filed herein, and discharge the order to show cause for the following reasons:

1. The Court is without jurisdiction to issue a writ of habeas corpus.

2. The petitioner is not in the custody of the respondents.

3. The Court lacks jurisdiction to command the Secretary of State to obtain the return of relator's husband.

LEO A. ROVER
Leo A. Rover
United States Attorney
EDWARD O. FENNELL
Edward O. Fennell
Assistant United States Attorney

* * *

15 Filed Dec. 23, 1953

Memorandum of Points and Authorities in Support of a Motion to Dismiss the Petition and Discharge the Writ

ARGUMENT I

Based on the Allegations of the Petition Filed Herein, This Court is Without Jurisdiction to Issue a Writ of Habeas Corpus.

Petitioner complains that the unlawful detention of Keefe is the result of a conviction by a French Court. Allegedly

Keefe was convicted of the crime of "robbery" in violation of the civil laws of France, and is presently being detained in that country by the French authorities. Keefe, therefore, is without the territorial limits of this Court.

Title 28, Section 2241(a), United States Code, is in part as follows:

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions . . ."

Jurisdiction of the district courts is territorial. (*Ahrens* v. *Clark,* 1947 335 U.S. 188). It follows that the power to issue the writ is also territorial. (*Jones* v. *Biddle,* 131 F2d 853; *Goodman* v. *Roberts,* 153 F2d 841). Habeas corpus, therefore, must be brought in the district of confinement. *United States* v. *Hayman,* 1951, 342 U. S. 205).

The Court, therefore, lacks jurisdiction to issue the writ of habeas corpus.

ARGUMENT II

The Order to Show Cause Should Be Discharged as the Petitioner is Not in the Custody of the Respondent.

Title 28, United States Code, Section 2243 reads in part as follows:

"The writ, or order to show cause shall be directed to the person having custody of the person detained . . ."

It is apparent from the petition filed herein that Richard Thomas Keefe is not in the custody of the respondent. Rather, the petition alleges that Keefe is in the custody of the French Government as the result of a "Robbery" conviction by a French Court at Orleans, France.

16 It is an established rule of law, that the issuance of the writ of habeas corpus contemplates a proceeding against some person who has the immediate custody of

the person detained, and with the power to produce the body of such person before the Court issuing the writ. (*Wales* v. *Whitney*, 114 U.S. 564; *Jones* v. *Biddle*, 131 F2d 853; *cert. denied* 318 U.S. 784; *Sanders* v. *Allen*, 69 App. D. C. 307; 28 U.S.C.A. 2243).

The respondents are obviously Cabinet Officers and representatives of the United States Government, and are not members or representatives of the Government of France. An order of this Court requiring them to produce the body of Keefe, detained by the French Government, could not be complied with physically. It is respectfully submitted, therefore, that the petition for a writ of habeas corpus be dismissed and the order to show cause be discharged.

ARGUMENT III

The Court Lacks Jurisdiction to Command the Secretary of State to Obtain the Return of the Relator's Husband.

A. *The subject matter of the proceeding involves the conduct of foreign relations.*

Paragraph 6 of the petition makes it clear that the objective of the petition is to compel the Secretary of State to undertake diplomatic negotiations with France concerning the release and return of Keefe to the United States. This clearly brings the proceeding within the area of foreign relations. Nothing falls more basically within that area than the making of diplomatic representations by the Government of one sovereign state to that of another. Nothing is more incontrovertibly established than that the conduct of foreign affairs is a political matter within the discretion of the executive and legislative branches of the Government. The courts have consistently recognized the plenary power of the President and of the Congress to perform acts peculiarly within the realm of political affairs without inter-

ference from the judiciary.[1] The principle of ju-
17 dicial abstention in the field of foreign relations is founded on the consideration that the exercise of an "antagonistic jurisdiction"[2] by the courts would embarrass the Government and undermine its position in its conduct of foreign relations. The unique character of "executive decisions as to foreign policy" has been well described by the Supreme Court in the following language:

"Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."[3]

In determining whether a decision is political and therefore not justiciable, among the dominant considerations are "the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination." (*Coleman* v. *Miller*, 307 U.S. 433, 454-455).

B. *The decision of the Executive in the field of international relations as to whether diplomatic representations should be made to a foreign government is conclusive.*

The question whether diplomatic representations should be made by the Department of State to the government of

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[1] *Boynton* v. *Blaine*, 139 U.S. 306, 323-325; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302; *Terlinden* v. *Ames*, 183 U.S. 270, 288; *Jones* v. *United States*, 137 U.S. 202, 212; *Guaranty Trust* v. *United States*, 304 U.S. 126, 137-139; *United States* v. *Curtiss-Wright Corp*; 299 U.S. 304, 319-321.

[2] *United States* v. *Lee*, 106 U.S. 196, 209.

[3] *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111.

a foreign country with respect to the detention of an American citizen convicted of a criminal offense in its territory is one of the most delicate that can arise in the field of international relations, involving not only the future relations between the United States and the other country but also the welfare of American citizens abroad. It follows from the authorities cited above that in any matter affecting such important elements of foreign policy the decision of the Executive should be controlling. Thus, a decision of the Executive in the foreign relations area that France properly exercised jurisdiction and that there is no basis for making representation to the French Government should be conclusive. To command the Secretary of State to obtain the release of Keefe would only precipitate a controversy with a foreign government which the court would be powerless to settle and would create a conflict between the Judiciary and the Executive in the field of foreign relations. It is therefore submitted that the question of making representations to the Government of France concerning the imprisonment of Keefe is a political one and is not appropriate for judicial review.

LEO A. ROVER
Leo A. Rover
United States Attorney
EDWARD O. FENNELL
Edward O. Fennell
Assistant United States Attorney

* * * * * *

19 Filed Jan. 4, 1954

Memorandum of Points and Authorities in Opposition to Respondent's Motion to Dismiss.

ARGUMENT I

Jurisdiction of This Court to Control Executive Department by Extraordinary Writs Has Been Established Since 1803

The Supreme Court of the United States in the case of Marbury v. Madison, 1 Cranch 137, decided February 20, 1803, declared that the Judiciary had jurisdiction to determine the legality, under the Constitution and Statutes, of an action by the Secretary of State. That case was

William Marbury, an employee of the State Department, was appointed by President John Adams, to be a justice of the peace for the county of Washington. By statute, the appointment was for 5 years. The commission was duly signed and delivered to the then Secretary of State to be impressed with the seal of the United States and delivered to Mr. Marbury. Before delivery, the administration changed and Thomas Jefferson was sworn in as President and he appointed James Madison to be his Secretary of State. Madison refused to deliver the commission to Marbury and Marbury brought a mandamus action against Madison, seeking to compel delivery of the commission. The Court held that Mr. Marbury was entitled to his commission. The Court remarked:

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court."

"In all other cases, he says, it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." (3d Vol. Blackstone's Commentaries, p. 2), p. 163).

"But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." (p. 166).

"The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one; in consequence of which a suit has been instituted against him, in which his defense had depended on his being a magistrate; the validity of his appointment must have been determined by judicial authority." (p. 167). *Marbury* v. *Madison,* 1 Cranch 137.

The court also considered the nature of the writ sued out in that case and said:

"The government of the United States is of the latter description (establish certain limits not to be transcended by those departments). The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution

controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act." (p. 176, 177).

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each." (p. 177).

"It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank." (p. 180).

It has also been established that one in the military service and convicted by Court Martial may, by means of a writ of Habeas Corpus, test the legality of his confinement. The case of Hicks v. Hiatt, decided January 15, 1946, is in point:

Habeas corpus proceeding by Donald Hicks, who was convicted by a court martial sitting in Corby, England in 1944 on the charge of rape. Petition for writ of habeas corpus in the District Court, Middle District, Pa. Biggs, Circuit Judge, sitting, held that the petitioner will be discharged from the custody. The proceeding later was dismissed as moot because before judgment was entered, the Army vacated the court martial sentence and
21 restored Hicks to duty. The Court quoted from U. S. v. Hiatt, 3rd Circuit, 141 F. 2nd 664, 666, that the due process clause of the Fifth Amendment applies to the defendant in a criminal proceeding in a federal military court and that the individual does not cease to be a person within the protection of the Fifth Amendment of the Constitution because he has joined the nation's armed forces and has taken an oath to "support that Constitution with his life if need be."

The court said:

"In this respect, the military law provides its own distinctive procedure to which the members of the armed forces must submit, but the due process clause guarantees to them that this military procedure will be applied to them in a fundamentally fair way. We conclude that it is open for civil court in a habeas corpus proceedings * * * and the manner in which it was conducted ran afoul of the basic standards of fairness which is involved in the Constitutional concept of the due process of law and if it so finds, to declare the relator has been deprived of his liberty in violation of the Fifth Amendment and to discharge him from custody." *Hicks* v. *Hiatt,* 3rd Circuit, 141 F. 2nd 664, 666.

Justice Storey, in considering the jurisdiction of the courts under the Constittuion, said:

"By cases and controversies the claims of litigants brought before courts for determination by such legal proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs, whenever the claim of the party under the constitution, laws, or treaties of the United States take such a form that the judicial power is capable of acting upon it, then it has, become a case."

The fact that the respondents have procured the confinement of petitioner's husband in a place out of the District of Columbia does not divest this Court of jurisdiction, because the respondents — the persons responsible for his illegal confinement — are within the jurisdiction of the Court.

The case of Sanders v. Allen, 69 App., DC 307, decided in 1938, is in point. Sanders was convicted of drunkenness and confined for 60 days by a court in the District of Columbia. She was transferred to Occoquan in Virginia, out of the District to serve her term. She sued out a writ

of habeas corpus against the Commissioners of the
22 District of Columbia, and claimed that she was not drunk when arrested, but drugged. The District Court denied the application for the writ; on appeal the United States Court of Appeals for the District of Columbia reversed and remanded the case to the District Court. The Court said:

"The question, in our view, depends rather upon whether the person against whom the writ is asked and who is responsible for the detention is within the jurisdiction." *Sanders* v. *Allen,* 69 App. DC, 307 (1938).

ARGUMENT II

It is clear that petitioner's husband is a member of the armed forces. Exhibit 1. It is also clear that the respondents jointly are responsible for Keefe's illegal confinement; that acting together they may produce the body of Keefe before this Honorable Court. The mere fact that the respondents have confined him at a distance from the District of Columbia does not prevent this Court from ordering his return.

This question was settled by this Court in the recent case of *Toth* v. *Talbot,* Secretary of the Air Force, United States District Court for the District of Columbia, Habeas Corpus No. 68-53. Toth was a former member of the armed forces of the United States, serving in the Air Force. He was discharged, and in the spring of this year, the Air Force police seized him in Pittsburgh, Pennsylvania, and transported him to Korea, where he was confined, to await trial by general court martial. Upon a petition for writ of Habeas Corpus, Judge Holtzoff of this Court, issued the writ, and the Secretary of the Air Force produced the body of Toth before the Court, as ordered. Upon a hearing, Toth was ordered released. The case is now before the

United States District Court for the District of Columbia, on an appeal by the Government. Regardless of the eventual outcome of the Toth case, it is clear from that case that this Court can order the armed forces to produce the body of an individual confined overseas, and obedience to such an order can be had. The mere fact that in
23 this case it is neecssary for the Secretary of State to inform the French government that the purported treaty which granted them jurisdiction over Keefe, is null and void because repugnant to the Constitution and so demand the return of Keefe to his station with the Army, might make compliance with this Court's order a trifle more difficult. The difficulty is caused by the respondents' violation of the Constitution, and because it is difficult for them, is no reason why this Court should refuse to recognize that Keefe's constitutional rights have been flagrantly violated.

ARGUMENT III.

The Secretary of State Cannot Disregard the Constitution of the United States, Any More Than the Most Obscure Citizen of the United States.

The very foundation of our Republic is government under law, and not under men. To say that the Secretary of State cannot have the constitutionality of his acts scrutinized by this Court, is to disregard the principle of Marbury v. Madison, supra. It seems equally clear that he cannot increase his power and so disregard the Constitution by a claim that his unconstitutional acts are in connection with a claimed foreign relationship of this Government to a foreign power. The answer to that contention is that the Constitution of the United States follows the American flag when it is carried by United States troops to any foreign field. It is that elemental principle which has been

disregarded by those who would support the so-called NATO Treaty. The perfidy of the so-called NATO Treaty is the more shocking when it is considered that it completely reverses the well-established International Law, as well as the laws of the United States.

The right of a nation to exercise authority over its forces while in a friendly foreign nation, was early recognized by the United States Supreme Court. In the Schooner Exchange v. M'Faddon and Others, 11 US 116, 3 L ed 287, Chief Justice Marshall, announcing the lack of jurisdiction of America over a French warship granted the right of passage in an American harbor, declared:

24 "In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted, the sovereign who should attempt to exercise it would certainly be considered as violating his faith. By exercising it, the purpose for which the free passage was granted would be defeated, and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable, and would be withdrawn from the control of the sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force. The grant of free passage therefore implies a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline, and to inflict those punishments which the government of his army may require."

In Coleman v. Tennessee, 97 US 509, 515, 24 L ed 1118, the Supreme Court declared:

"It is well settled that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place. The sover-

eign is understood * * * to cede a portion of his territorial jursdiction when he allows the troops of a foreign prince to pass through his dominions. * * *."

The doctrine of these cases has been approved in Dow v. Johnson, 100 US 158, 165, 25 L ed 632; and Tucker v. Alexandroff, 183 US 424, 433, 46 L ed 224, 22 S Ct 195. The decided weight of authority in international law supports this position. King, Jurisdiction Over Friendly Foreign Armed Forces, 36 American Journal of International Law 539; Idem, 40 American Journal of International Law 257; Barton, Foreign Armed Forces, 26 British Year Book of International Law 380.

ARGUMENT IV

The Cases Cited by Respondent Considered

Ahrens v. Clark, 335 US 188. This was a case of alien enemies ordered deported by the Attorney General during wartime. They were confined at Ellis Island awaiting deportation, and applied for a writ of habeas corpus. District Court of the District of Columbia dismissed the application. The Circuit Court of Appeals of the District of Columbia affirmed and on appeal to the Supreme Court, held affirmed. The Court said:

"We do not reach the question of whether the Attorney General is the proper respondent." Id. 193.

25 This is a case of alien enemies seeking protection of the Constitution and, it is submitted, has no bearing on this case.

Jones v. *Biddle* (1942) Circuit Court of Appeals, 8th Circuit.

Jones, confined in the United States Medical Center, Springfield, Mo., sued out a writ in the United States Dis-

trict Court for the Western District of Missouri against Biddle, the then United States Attorney General.

District Court dismissed application, and on appeal to the 8th Circuit Court was HELD affirmed.

"The statutes relating to habeas corpus manifestly contemplate that the respondent named in an application for habeas corpus shall be the person, within the territorial jurisdiction of the Court, who has the physical custody of the person of the petitioner and who is capable of producing him in Court."

The court remarked that the warden of prison was the proper respondent. id. 854.

This was a prisoner in Missouri, suing a cabinet officer in the District of Columbia. He was unsuccessful because there was a District Court in Missouri before which the warden of the penitentiary could be brought. The Toth case, supra, establishes that in the armed services, at least, the cabinet officer is the proper one to be sued and this Court is the proper court for the action.

Briggs v. *Pennsylvania Railroad Co.* (1946) 2nd Circuit.

Action by administratrix against the railroad, brought under the Federal Employers' Act. Plaintiff, administratrix in Pennsylvania, without taking out ancillary letters of administration in New York, sued in the United States District Court, Southern District of New York, for federal benefits. District Court judgment for defendant notwithstanding verdict for plaintiff on appeal held, reversed judgment for plaintiff on verdict.

Goodman v. *Hearn,* 153 F 2d 186 (1946) 5th Circuit.

Suit by the father of a boy of draft age, although a minor, to obtain his release from training camp after
26 induction, on the grounds that he was a theological student and so exempt from draft. Appeals through the selective service procedures for exemption had been fol-

lowed. District Court denied application for writ. On appeal, held affirmed.

"But we are not saying that an exemption given by Congress is not a legal right, or that the boards created by Congress can disregard it, or refuse to hear the claim to it, or deny due process in the hearing. Any tribunal which passes on a right must give a fair hearing and an honest decision." id. 188.

Hayman confined in a federal prison in the State of Washington sued out his writ in the United States District Court, Southern District of California, which had sentenced him on the grounds that his attorney had also represented the principal witness against Hayman. The District Court without requiring Hayman's presence or notice to Hayman, took testimony on the issues of fact and found against him and so denied his suit. On appeal, the 9th Circuit raised questions as to the Constitutionality of T 28, §2255, which granted jurisdiction to the sentencing court regardless of place of confinement. On appeal to the Supreme Court of the United States:

Held: Vacated and remanded.

The Court of Appeals refused to affirm or deny, held Hayman's motion for new trial dismissed so that he could proceed by habeas corpus in the district where confined.

The Court said:

"Under the 1867 Act, United States District Courts have jurisdiction to determine whether a prisoner has been deprived of liberty in violation of Constitutional rights, although the proceedings resulting in incarceration may be unassailable on the face of the record. Under that Act, a variety of allegations have been held to permit challenge of convictions on facts de hors the record." (Citing cases, id. 211, 212).

Wales v. *Whitney,* 114 U. S. 564 (1885).

Wales, a medical director of the Navy, had been ordered tried by a general court martial by the Secretary of the Navy. Wales sued out a writ in Federal Court, District of Columbia. The Secretary of the Navy
27 produced body of Wales and adjourned the general court martial pending outcome of proceedings on writ. Trial Court held petition to be dismissed on grounds that Wales was not deprived of his liberty by Secretary of the Navy. On appeal Held—affirmed.

The Court considered, does return show restraint as will justify writ? and said:

"Its purpose is to enable the court to enquire, first, if the petitioner is restrained of his liberty. * * * If there is such restraint, the court can then enquire into the cause of it, and, if the alleged cause is unlawful, it must then discharge the prisoner." id. 571.

Decided against petitioner because no physical restraint was shown and said:

"If the court martial be without jurisdiction and he is imprisoned as a part of his sentence, he can then have a writ to relieve him of that imprisonment." id. 575.

Boynton v. *Blaine,* 139 U.S. 306.

Boynton applied in the District of Columbia for a writ of mandamus to compel the Secretary of State to pay him as the assignee of Weil, money in respects to claim allowed under the convention between the United States and Mexico for adjudication of claims of the citizens of either government against the other. Mexico had complained that the award to Weil was fraudulent and the President had directed that Weil's claim be *retried.*

Rule to show cause granted, Secretary of State answered and case heard. Mandamus refused upon appeal *affirmed.*

The Court said:

"The political trust with which every government is charged, as respects its own citizens, was not the ground of relator's contention, * * * *."

"The inaction of Congress is not the equivalent to a direction by Congress. The political department has not parted with its power over the matter, and the intervention of the judicial department cannot now be invoked." id. 326.

Oetjen v. *Central Leather Co.*, 246 U.S. 297.

28 Writ of replevin by assignee of a Mexican citizen for leather goods seized in Mexico by Mexican revolutionary General. Suit in New Jersey State Court which found for defendants, affirmed on appeal to Court of error and on appeal held affirmed. On the ground that the United States had recognized the revolutionary government the Court was bound by Executive acting in the political field.

The Court said:

"Who is sovereign, de jure or de facto, of a territory is not a judicial, but is a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government." id. 302.

Jones v. *United States,* 137 U.S. 202.

Jones and others were indicted in Federal Court in Maryland for murder committed on certain Guano Islands, convicted. On appeal Held—affirmed.

Jones contested the Constitutionality of the Act extending United States jurisdiction to Guano Islands. The Court merely held that when the Executive and Legislative branch asserted sovereignty, it was binding on the Judiciary.

Guaranty Trust v. *United States,* 304 U.S. 126.

United States as the assignee of Soviet Russia sued in 1934 Guaranty in Federal Court in New York to recover deposit by Imperial Government made in 1917. Guaranty defended on New York Statute of Limitations. District Court found for Guaranty and 2nd Circuit reversed on appeal. *HELD* Reversed.

The Court said:

"What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question and is to be determined by the political department of our government. * * * courts * * * bound to accept, * * *, although they are free to decide for themselves its legal consequences in litigations pending before them." p. 137.

"Even the language of a treaty wherever reasonably possible will be construed so as not to override state laws or to impair rights arising under them." id. 143.

In view of the foregoing and such other points and authorities as may be presented on oral argument, it
29 is submitted that respondent's motion to dismiss ought to be overruled.

JOHN H. COFFMAN
John H. Coffman
Attorney for Petitioner
1616 Eye Street, N.W.
Washington, D. C.
REpublic 7-0892

OF COUNSEL:
EUGENE C. POMEROY
1255 New Hampshire Ave., N.W.
Washington, D. C.

* * * * * *

30 Filed Jan. 4, 1954

Exhibit 1

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF INFORMATION
WASHINGTON, D. C.

1 December 1953

Mrs. Richard T. Keefe
6601 Edmundson Road
East Riverdale, Maryland

Dear Mrs. Keefe:

This will confirm the information given you verbally by Captain Flesher of this office in answer to your query about the conviction and sentence of your husband, Pvt. Richard T. Keefe, by the Assizes Court of Orleans, France, on October 30.

Your husband, along with Pvt. Anthony Scaletti, plead guilty to an "intentional robbery" (banditry) charge which involved the theft of a taxi-cab. Under French law, this charge is more serious than a charge of theft, as the crime was committed at night, by two persons, on a public thoroughfare and was accompanied by violence to the cab driver who suffered a broken nose and other injuries.

They were charged and tried in French civil court under a treaty our government has with the French government which allows such courts to hear cases involving offenses committed by off-duty American servicement against French nationals or their property. Had the offense been against United States personnel or property, trial would have been conducted by a United States military court.

The maximum punishment under French law for the charge under which the men were tried is life imprisonment with hard labor and banishment to a French penal colony.

Your husband and Pvt. Scaletti were sentenced to five years without hard labor or banishment to a French penal colony. According to information furnished this office by the Staff Judge Advocate of Headquarters, U. S. Army Europe, Communications Zone, the men did not desire to appeal their sentences.

Both men had a competent French attorney who is reported to have brought all mitigating factors possible into the argument of the case. A representative of the Staff Judge Advocate was present throughout the trial and he reported that the accused were given all the fundamental safeguards they would enjoy in a United States court.

While your husband is in prison, he will be considered in an "off-duty" status and therefore ineligible for pay and allowances. He will, however, have an opportunity to earn spending money while in prison.

31 Although you will no longer continue to get your allotment since your husband is not being paid, he is still a member of the Armed Forces and, for such time as he is, his dependants are entitled to medical care and other benefits.

Please be assured that the Department of the Army will continue its interest in your husband's welfare and will take advantage of any legal means offered to shorten his stay in prison.

Sincerely yours,

GEO. PATRICK WELCH
Geo. Patrick Welch
Colonel, GS
Chief, Public Information Division

* * * * * *

32 Filed Jan. 13, 1954

Order

This cause having come on for consideration on a petition for a writ of habeas corpus, an order to show cause, respondents' motion to dismiss the petition and discharge the order to show cause, and argument of counsel, and it appearing to the Court that the petitioner is not in the custody of the respondents, and that this Court is without jurisdiction to issue a writ of habeas corpus, it is this 13 day of January, 1954,

ORDERED, that the respondents' motion to dismiss the petition and discharge the order to show cause, be, and the same hereby is, granted.

EDWARD M. CURRAN
Judge

* * * * * *

33 Filed Jan. 15, 1954

Notice of Appeal

Notice is hereby given that Gladys Keefe, petitioner above named, hereby appeals to the United States Court of Appeals from the final judgment dismissing her petition entered in this action on the 13th day of January, 1954.

JOHN H. COFFMAN
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REpublic 7-0892

OF COUNSEL:
EUGENE C. POMEROY
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Washington, D. C.

Proceedings

In the United States District Court for the
District of Columbia
Habeas Corpus No. 145-53

UNITED STATES ex relator, GLADYS KEEFE,
Petitioner,

v.

JOHN FOSTER DULLES, Secretary of State, CHARLES E. WILSON, Secretary of Defense, ROBERT B. STEVENS, Secretary of the Army,
Respondents.

Washington, D. C.,
Tuesday, January 5, 1954.

The above-entitled action came on for hearing on rule to show cause before the HON. EDWARD M. CURRAN, United States District Judge, at 10 o'clock a.m.

APPEARANCES:
On behalf of the Petitioner:
JOHN H. COFFMAN, Esq.
On behalf of the Respondents:
EDWARD O. FENNELL,
Assistant United States Attorney

PROCEEDINGS

Deputy Court Clerk: Keefe v. Dulles.
The Court: Is this a petition for writ of habeas corpus?
Mr. Coffman: Yes, Your Honor.
The Court: Filed by whom, the wife?
Mr. Coffman: The wife.
The Court: Where is the husband?
Mr. Coffman: He is confined in France, Your Honor.

The Court: By whom?

Mr. Coffman: Under the NATO treaty by a French court.

The Court: Tried by a French court for what?

Mr. Coffman: Robbery, I believe is the charge, Your Honor.

The Court: Who was he sentenced by, a French court?

Mr. Coffman: By a French court.

The Court: How am I going to release him?

Mr. Coffman: We think he was confined under an illegal treaty; that these respondents and/or the court can obtain his release.

The Court: All right, go ahead.

Mr. Coffman: The government has a motion to dismiss, Your Honor.

The Court: Oh.

Mr. Fennell: Your Honor please, we have filed a motion to dismiss. I have also prepared a return and answer which I have not filed at this time, but I am prepared to file it. The motion to dismiss really is based upon three grounds.

The Court: I can't pass on the validity of a treaty, can I?

Mr. Coffman: Certainly, Your Honor.

The Court: I can? You say why, of course, it is nothing; tell me, it is news to me how a court is going to pass upon the validity of treaties entered into between a foreign country and the United States.

Mr. Coffman: I'd be very glad to, Your Honor.

The Court: I cannot see how I am going to release this man. If this man committed robbery in France and was tried by a French court, he is not in the custody of any officer of the United States, is he?

Mr. Coffman: We believe he is, Your Honor. In the first place, he is a soldier.

The Court: That hasn't anything to do with it.

Mr. Coffman: He is under the jurisdiction of the Armed Forces; he was taken by them overseas.

The Court: Go ahead.

Mr. Coffman: He was turned over by them to a French court and he was deprived of the protection of the Constitution of the United States, to which he was entitled by that act. They purported to act under orders from the Secretary of State because of either a preliminary agreement entered into by the Secretary or under the NATO treaty. They say now it is the NATO treaty and they waived this man's constitutional rights and they had no authority to do so.

The Government of the United States, as Your Honor well knows, is composed of three branches, the legislative, executive, and judicial; they must all act within their constitutional powers. If the legislative and executive combine, as they have in this case, to purport to pass a treaty and waive the constitutional protection that Private Keefe is entitled to, then the judiciary can restrain their unconstitutional act.

Now, if the treaty is repugnant to the Constitution, it is null and void and has no effect whatever; and I say to Your Honor that an order from this court directed to the Secretary of State will bring into play the machinery by which Private Keefe will be returned to the United States and to his constitutional rights.

Now, Mr. Dulles, speaking on treaties in a major policy address to the American Bar Association last August, said:

> "I do not believe that treaties within the meaning of Article VI of our Constitution, which provides that treaties shall be the supreme law of the land, are measures of primarily domestic import or that the treaty forum can lawfully be used to circumvent the constitu-

tional procedures established in relation to what are essentially internal affairs."

There is no more serious internal affair in this country than when you consider the loyalty which Private Keefe, as a citizen, owes to the Government of the United States and, in return for that loyalty it demands from him, they owe to him a duty of protection and that protection means protection in his constitutional rights guaranteed by the bill of rights.

The government, by its motion to dismiss, admits that he is deprived of his liberty in violation of the Fifth, Eighth, and Thirteenth Amendments of the Constitution. I say to Your Honor that since the executive and the legislative have withdrawn that protection from him, then the third great branch of the government, the judiciary, can give it back to him and they can do it by a simple order granting a writ of habeas corpus and commanding these respondents, who jointly turned him over, to jointly get him back.

I have cited cases in my memorandum. The government would say, in its motion to dismiss, that this court cannot order the Secretary of State to bring him back because it touches foreign relations. Now, every contact between the American Government and any foreign country doesn't take it out of the ambit of the Constitution; it is to be considered by the courts and that was established early—

The Court: Keefe was in France?

Mr. Coffman: That is correct, Your Honor.

The Court: A soldier of the United States?

Mr. Coffman: That is correct, sir.

The Court: He was charged with robbery?

Mr. Coffman: By a French court.

The Court: That is right, he was charged with robbery by a French court, he was tried by a French court, convicted and sentenced; that is correct, isn't it?

Mr. Coffman: That is true.

The Court: All right, I just wanted to get the facts straight, that is all.

Mr. Coffman: I call Your Honor's attention to the case of The Schooner Exchange cited in my points and authorities, decided by Chief Justice Marshall right after the turn of the 19th century. In that case, Your Honor, an American vessel had been seized by the French Government on the high seas, converted into a French sloop of war, France and the United States were at peace, the sloop put into a port in the United States, I believe Philadelphia, and there the former owners sued out a suit in admiralty to libel the vessel on the ground that they were the real owners. It went to the Supreme Court. Chief Justice Marshall said that when a sovereign permits a friendly power to send a vessel of war into its harbors, it grants a right of free passage and it waives any jurisdiction by the visited power over the foreign ship of war.

Now, there is no difference between an American soldier in France and a French ship of war in the United States.

Now, that was reaffirmed in Coleman v. Tennessee, 97 U.S. 509, when it said—

The Court: Suppose a French soldier is in the District of Columbia and he is guilty of robbery; you mean that this court can't do anything about it?

Mr. Coffman: In the absence of the NATO treaty, this court could not do anything about it; and that is what is said in Coleman v. Tennessee, if I may read just an excerpt to Your Honor.

The Court: Let's forget about the NATO treaty.

Mr. Coffman: Your Honor, that is the whole thing.

The Court: Let's forget about it for awhile, let's go back prior to the NATO treaty. A French soldier in the United States, you say that even though he is an alien that he is not bound to obey our laws?

Mr. Coffman: He escapes not because he is an alien, Your Honor, but because he is a French soldier and his loyalty is to the French Government.

The Court: He can do anything he wants to over here?

Mr. Coffman: That is correct, Your Honor.

The Court: That is very novel, I don't think I can agree with you.

Mr. Coffman: Your Honor, that has been the rule of international law for six hundred years.

The Court: Maybe I don't know much about international law. Is that all you have to say?

Mr. Coffman: Well, that is our case, Your Honor.

The Court: The motion to dismiss is granted. Prepare the order.

Mr. Fennell: Yes, Your Honor.

(Whereupon, the foregoing proceedings were concluded.)

* * * * * *

APPENDIX — APPELLEES

Article VII of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces.

1. Subject to the provisions of this Article,

(a) The military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

(b) The authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2. (a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include

(i) Treason against the State;

(ii) Sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to—

(i) Offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;

(ii) Offences arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the

other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

5. (a) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(c) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sendng State, remain with that State until he is charged by the receiving State.

6. (a) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(b) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7. (a) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

(b) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

(a) To a prompt and speedy trial;

(b) To be informed, in advance of trial, of the specific charge or charges made against him;

(c) To be confronted with the witnesses against him;

(d) To have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;

(e) To have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;

(f) If he considers it necessary, to have the services of a competent interpreter; and

(g) To communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial.

10. (a) Regularly constituted military units or formations of a force shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the receiving State. The military police of the force may take all appropriate measures to ensure the maintenance of order and security on such premises.

(b) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the receiving State and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the force.

11. Each Contractng Party shall seek such legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of other Contracting Parties, and the punishment of persons who may contravene laws enacted for that purpose.

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 12,107

UNITED STATES ex relator, GLADYS KEEFE,
Appellant,

v.

JOHN FOSTER DULLES, Secretary of State, et al.,
Appellees.

Appeal from the United States District Court
for the District of Columbia

Decided September 16, 1954

Mr. John H. Coffman for appellant.

Mr. Oliver Gasch, Principal Assistant United States Attorney, with whom *Messrs. Leo A. Rover,* United States Attorney, and *Lewis A. Carroll* and *Edward O. Fennell,* Assistant United States Attorneys, were on the brief, for appellees.

Before WILBUR K. MILLER, BAZELON and DANAHER, Circuit Judges.

WILBUR K. MILLER, Circuit Judge: Richard Thomas Keefe, a private in the United States Army stationed in France, and another American soldier, pleaded guilty October 30, 1953, in a French civil court to a charge that in off-duty hours they had beaten a cab driver and stolen his taxicab. Each is now serving in a French civil prison the five-year sentence imposed upon him by the French court.

December 16, 1953, Keefe's wife filed in his behalf in the United States District Court for the District of

Columbia a petition for a writ of habeas corpus. For obvious reasons, Mrs. Keefe did not ask that the writ be directed to the foreign jailer. Instead she named as respondents the Secretary of State, the Secretary of Defense and the Secretary of the Army, alleging those officials had conspired to deprive her husband of his liberty. She charged that, acting through their agents, servants or employees, the three Secretaries "actually have deprived the said Richard Thomas Keefe of his liberty, in a 'Maison de Correction' at Orleans, France."

Apparently she meant only to charge the Secretaries with indirectly causing her husband's present incarceration by not preventing the French from taking, trying, convicting and confining him, for she also alleged that her husband's imprisonment "was and is brought about by an alleged trial of him by a French court on October 31, 1953, for the offense of 'Robbery', i.e., taking a civilian taxicab by force, and for which he was sentenced to confinement for a term of five (5) years." This was in effect an allegation of what is undoubtedly the fact: that Keefe is imprisoned by a French civilian jailer pursuant to the French court's sentence.

Upon the filing of this petition, the District Court entered an order to show cause. The respondents' motion to dismiss the petition and discharge the show cause order was granted as follows:

> "This cause having come on for consideration on a petition for a writ of habeas corpus, an order to show cause, respondents' motion to dismiss the petition and discharge the order to show cause, and argument of counsel, and it appearing to the Court that the petitioner is not in the custody of the respondents, and that this Court is without jurisdiction to issue a writ of habeas corpus, it is this 13 day of January, 1954,

> "ORDERED, that the respondent's motion to dismiss the petition and discharge the order to show cause, be, and the same hereby is, granted."

This appeal is prosecuted from the foregoing order.

The question is, therefore, whether the District Court erred in refusing to issue a writ of habeas corpus pursuant to the petition we have described. That depends on whether Keefe is held in actual or constructive custody by the respondents named in the petition, or by any other person or persons subject to the jurisdiction of the District Court. If not, it was properly denied, for reasons presently to be stated.

The petition shows on its face that Keefe is not in the custody of the respondents. It also shows, because it alleges he is detained by French civil authorities, that there is no one within the jurisdiction of the court who is responsible for his detention and who would be an appropriate respondent. It was therefore necessary to dismiss the petition insofar as it sought a writ of habeas corpus, as a court will not issue that writ unless the person who has custody of the petitioner is within reach of its process. *Cf.* Ex parte *Endo*, 323 U. S. 283, 306 (1944).

Although the petition was insufficient to require or justify habeas corpus, we think it should be examined as one seeking a mandatory order requiring the Secretary of State to obtain Keefe's release through diplomatic negotiations with France. Mrs. Keefe's allegations in that respect, though sketchy, are probably sufficient to show she was seeking that relief.[1] Moreover, her brief seems to be directed to the proposition that the Secretary of State can

[1] The petition alleged that the Secretary of State can, "by representations to the Government of France," obtain Keefe's release. And the prayer was not only for a writ of habeas corpus, but also "For such other and further relief as to the Court may seem just and proper."

effectuate the prisoner's release, that it is his legal duty to do so, and that the court can and should require him to perform that duty. We understand her argument to be substantially this:

(a) In its reservation to its ratification of the Status of Armed Forces Treaty,[2] the Senate of the United States "specifically provided that, when the constitutional rights of an American serviceman was [*sic*] violated overseas, the chief diplomatic officer should intercede";

(b) Keefe's constitutional rights have been and are being violated by the French in that he was compelled to be a witness against himself, might have been cruelly and unusually punished by deportation to a penal colony, and is now in involuntary servitude;

(c) It is therefore the legal duty of the Secretary of State to intercede and obtain Keefe's release, which he can now do "by representations to the Government of France."

We discuss appellant's premises (a) and (b) and her conclusion (c) in that order:

(1) The Senate's reservation in its ratification of the Treaty does not provide that, when an American soldier's constitutional rights are violated in a foreign criminal trial, the Secretary of State should or shall intercede in his behalf through diplomatic negotiations. Its provision is that an American observer shall attend the trial and report to the commanding officer any violation of Article VII, § 9, of the Treaty,[3] whereupon that officer "shall then request

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2 "AGREEMENT BETWEEN THE PARTIES TO THE NORTH ATLANTIC TREATY REGARDING THE STATUS OF THEIR FORCES," 99 Cong. Rec. 8724 (1953).

3 Section 9 of Article VII, 99 Cong. Rec. 8725, 8726 (1953), is as follows:

"9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

"(a) to a prompt and speedy trial;

"(b) to be informed, in advance of trial, of the specific charge or charges made against him;

the Department of State to take appropriate action to protect the rights of the accused."[4]

(2) Mrs. Keefe's allegations made on information and belief that her husband's constitutional rights were violated were not supported by the record, which sufficiently shows that the contrary is true. A representative of our Staff

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"(c) to be confronted with the witnesses against him;

"(d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;

"(e) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;

"(f) if he considers it necessary, to have the services of a competent interpreter; and

"(g) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial."

[4] The resolution of ratification, as amended by the committee reservation [99 Cong. Rec. 8780 (1953)], is in pertinent part as follows:

"In giving its advice and consent to ratification, it is the sense of the Senate that:

"1. The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;

"2. Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the commanding officer of the Armed Forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

"3. If, in the opinion of such commanding officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall request the authorities of the receiving state to waive jurisdiction in accordance with the provisions of paragraph 3 (c) of article VII (which requires the receiving state to give 'sympathetic consideration' to such request), and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the executive branch to the Armed Services Committees of the Senate and House of Representatives;

"4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving state will attend the trial of any such person by the authorities of a receiving state under the agreement, and any failure to comply with the provisions of paragraph 9 of article VII of the agreement shall be reported to the commanding officer of the Armed Forces of the United States in such state who shall then request the Department of State to take appropriate action to protect the right of the accused, and notification shall be given by the executive branch to the Armed Services Committees of the Senate and House of Representatives."

Judge Advocate was present at the trial and reported no unconstitutional irregularities.[5] The commanding officer did not think it necessary to request the State Department to take action to protect Keefe's rights.

(3) Since appellant's premises (a) and (b) fail, her conclusion (c) must fall. The Secretary of State was not requested by the commanding officer of the area to make the representations to France which Mrs. Keefe would have him make. Even had the request been made, whether to grant it would have been within the Secretary's discretion. He was not under a legal duty to attempt through diplomatic processes to obtain Keefe's release. Quite to the contrary, the commencement of diplomatic negotiations with a foreign power is completely in the discretion of the President and the head of the Department of State, who is his political agent. The Executive is not subject to judicial control or direction in such matters. *Marbury* v. *Madison*, 1 Cranch [5 U. S.] 137, 164 (1803); cf. *United States* v. *Curtis-Wright Export Corp.*, 299 U. S. 304 (1936). Accordingly we hold the petition was properly dismissed, even though it be regarded as seeking affirmative injunctive relief against the Secretary of State.

This action might also be regarded as one seeking an order in the nature of mandamus requiring the Secretary of Defense to reinstate the monthly allotment to the wife

[5] The letter, dated December 1, 1953, which Mrs. Keefe received from the Department of the Army and which she submitted to the court, contains the following:

". . . According to information furnished this office by the Staff Judge Advocate of Headquarters, U. S. Army Europe, Communications Zone, the men did not desire to appeal their sentences.

"Both men had a competent French attorney who is reported to have brought all mitigating factors possible into the argument of the case. A representative of the Staff Judge Advocate was present throughout the trial and he reported that the accused were given all the fundamental safeguards they would enjoy in a United States court."

and children which was cancelled after Keefe's conviction.[6] Mrs. Keefe alleged the secretary had "without any justification or excuse" terminated the monthly payment which she "is informed and therefore believes, is an allotment to which she is entitled under congressional enactment." The petition cited no statute requiring a soldier's pay and allowances to be continued in circumstances such as those shown here. We know of no such enactment.

The petition was insufficient as a claim for reinstatement of the allotment; it falls short of being the "short and plain statement of the claim showing that the pleader is entitled to relief" required by Rule 8 (a) (2) of the Federal Rules of Civil Procedure. This rule requires the pleader to disclose adequate information as the basis of his claim for relief as distinguished from a bare averment that he wants relief and is entitled to it.[7]

Affirmed.

BAZELON, *Circuit Judge,* concurring in part and dissenting in part: I concur in the court's opinion except for that part which purports to deny a claim for reinstatement of the monthly allotments for the serviceman's family. Although the petition recites that these allotments have been terminated, there is no specific prayer for their reinstatement; nor was the matter dealt with in the briefs and arguments. In these circumstances, I think there is no

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[6] In the letter dated December 1, 1953, the Department of the Army advised Mrs. Keefe as follows:

"While your husband is in prison, he will be considered in an 'off-duty' status and therefore ineligible for pay and allowances. He will, however, have an opportunity to earn spending money while in prison.

"Although you will no longer continue to get your allotment since your husband is not being paid, he is still a member of the Armed Forces and, for such time as he is, his dependants are entitled to medical care and other benefits."

[7] See page 9 of "Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Court," prepared by the Advisory Committee on rules for Civil Procedure, May, 1954.

basis even to consider such a claim, let alone to make a final disposition denying it on the ground that "the petition was insufficient as a claim for reinstatement of the allotment."

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

April Term, 1954.

No. 12,107

UNITED STATES ex relator, GLADYS KEEFE,
Appellant,

v.

JOHN FOSTER DULLES, Secretary of State, et al.,
Appellees.

Appeal from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Bazelon, and Danaher, Circuit Judges.

JUDGMENT
Filed September 16, 1954.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is Ordered and Adjudged by this Court that the order of the said District

Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: September 16, 1954.

Per Circuit Judge Wilbur K. Miller.

Separate opinion by Circuit Judge Bazelon concurring in part and dissenting in part.

CLERK'S MEMORANDUM OF FILING OF PETITION FOR REHEARING

9-29-54 25 copies of appellant's petition for rehearing. Filed.

9-29-54 Certificate of service of appellant's petition for rehearing. Filed.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit
October Term, 1954

No. 12,107

UNITED STATES Ex Relator, GLADYS KEEFE.
Appellant.

v.

JOHN FOSTER DULLES, Secretary of State, et al.,
Appellees.

Before: Wilbur K. Miller, Bazelon, and Danaher,
Circuit Judges, in Chambers.

ORDER

(Filed October 15, 1954

Upon consideration of appellant's petition for a rehearing, it is

ORDERED by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: October 15, 1954

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 12,107

UNITED STATES EX RELATOR, GLADYS KEEFE, Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State, et al., Appellees.

DESIGNATION OF RECORD

(Filed January 3, 1955)

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to appellant's briefs.
   Appendix to appellee's brief.
2. Opinion.
3. Judgment.
4. Clerk's memorandum of filing of petition for rehearing.

5. Order denying petition for rehearing.
6. This designation.
7. Clerk's certificate.

Merrit B. Curtis
Attorney for Appellant

I certify further that copies of this petition have been served upon respondents by registered, return receipt mail, in accordance with Rule 31 (h) of the General Rules of this Court.

Merrit B. Curtis

IN THE UNITED STATES COURT OF APPEALS
For the District of Columbia

No. 12,107

UNITED STATES, EX RELATOR, GLADYS KEEFE,
Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State, et al.
Appellees.

CERTIFICATE OF SERVICE

I, MERRIT B. CURTIS, attorney for Appellant, 910-17th Street, N. W., Washington 6, D. C., do hereby certify that copy of attached Designation of Record was this 31st day of December, 1954, mailed, postage prepaid, to Leo A. Rover, U. S. Attorney, as attorney for Appellees, at the United States Court House, Washington 1, D. C.

Merrit B. Curtis
Attorney for Appellant

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered from 1 to 58, both inclusive, constitute a true copy of the appendices to the briefs and of the record and proceedings in the said Court of Appeals, as designated by counsel for appellant, in the case of:

UNITED STATES EX RELATOR, GLADYS KEEFE,
Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State, et al.,
Appellees.

No. 12,107 October Term, 1954, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this sixth day of January, A.D. 1955.

Joseph W. Stewart
Clerk of the United States Court of Appeals for the District of Columbia Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 537

UNITED STATES EX REL. GLADYS KEEFE, PETITIONER

v.

JOHN FOSTER DULLES, SECRETARY OF STATE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals (Pet. 85-92) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 16, 1954 (Pet. 92-93).[1] A petition for rehearing was denied October 15, 1954

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[1] Since petitioner has printed pertinent parts of the record as an appendix to her petition, references will be to the petition.

(Pet. 94). The petition for a writ of certiorari was filed January 13, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a writ of habeas corpus lies to review the detention of an American soldier in France by French authority after conviction in a French court for a crime under the laws of France committed by the soldier in France while he was absent from his army post.

2. Whether the NATO Status of Forces Agreement, by recognizing the right of France to try an American soldier for crimes under the law of France against the person or property of French residents, deprives the soldier of rights guaranteed by the Constitution.

TREATY INVOLVED

The pertinent parts of Article VII of the "Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces" ratified by the United States Senate July 15, 1953, T.I.A.S. No. 2846, and the resolution of ratification, are set forth in the Appendix, *infra*.

STATEMENT

Petitioner's husband, a private in the United States Army stationed in France, pleaded guilty on October 30, 1953, in a French civil court to a charge of robbery in that, while absent without leave in France, he and another soldier had stolen a taxicab. For that crime, petitioner is serving in a

French civil prison a five-year sentence imposed upon him by the French court. (Pet. 50, 72-73.)

Petitioner filed in the United States District Court for the District of Columbia a writ of habeas corpus addressed to the United States Secretary of State, Secretary of Defense, and Secretary of the Army (Pet. 49-53), alleging that they had conspired to deprive her husband of his liberty, and attacking the validity of the NATO Status of Forces Agreement, a treaty ratified by the Senate, under which the United States recognized the right of France to try an American soldier stationed in France who committed crimes against the law of France. The petition alleged that the respondent Secretary of State "could have and can now by representations to the Government of France, under well recognized principles of International Law, effect the return" of petitioner's husband (Pet. 52).

An order to show cause issued (Pet. 53), and respondents filed a motion to dismiss, asserting that the court was without jurisdiction and that petitioner's husband was not in their custody (Pet. 54-58). The District Court dismissed the petition (Pet. 74). The Court of Appeals affirmed (Pet. 92-93), holding that there was no respondent within the jurisdiction of the court who was responsible for the detention of petitioner's husband (Pet. 87). Treating the petition as one seeking a mandatory order requiring the Secretary of State to obtain the release of petitioner's husband

through diplomatic negotiations, the court held that the petition stated no grounds for relief (Pet. 87-90).

ARGUMENT

1. Petitioner's husband is held by French authorities pursuant to a conviction in a French court for a crime committed in France against the laws of France. Since petitioner is not detained by any officer of the United States or under its authority, there is no respondent within the jurisdiction of the District Court who could effectuate his release. Thus, the legality of his detention cannot be determined by habeas corpus proceedings in an American court. *Hirota* v. *MacArthur,* 338 U.S. 197.

2. Assuming that the action may be treated as one to compel the Secretary of State to endeavor to secure the release of petitioner's husband, it states no grounds for relief. The main thrust of petitioner's argument is not that representations should be made under the NATO Status of Forces Agreement for failure to comply with the terms of that treaty; she alleges, rather, that such representations should be made because the treaty is invalid as permitting the infringement of her husband's constitutional rights. However, a trial for the type of crime which her husband committed—a private crime within the territorial jurisdiction of France, outside an army post, against the property of a French resident—is not

controlled by the United States Constitution. *Neeley* v. *Henkel,* 180 U.S. 109, 123.[2]

It is clear that the terms of the treaty were complied with. The American observer who was present found no violation of any basic rights which petitioner's husband would have enjoyed at an American trial (Pet. 89-90). Petitioner argues that her husband might have been compelled to incriminate himself and might have been sent to a penal colony. In actuality, however, he pleaded guilty and was sentenced to imprisonment for five years. He was informed of the charge and represented by counsel who presented such arguments as were available in his behalf. Thus, as the Court of Appeals held, petitioner presented no facts which would warrant representations under the treaty. Moreover, as that court also held, the Executive is not subject to judicial control or direction in matters involving diplomatic negotiations with a foreign power.

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[2] While any prior rule of international law could obviously be changed by treaty, it should be noted that there is no firmly established rule of international law which would give members of friendly foreign forces complete immunity from local jurisdiction to punish them for local crimes. See the Statement of the Attorney General on this subject, 99 Cong. Rec. 8762-8769; Schwartz, *International Law and the NATO Status of Forces Agreement,* 53 Columbia Law Review 1091 (1953).

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General,

BEATRICE ROSENBERG,
Attorney.

FEBRUARY 1955.

APPENDIX

Article VII of the Agreement Between the
ties to the North Atlantic Treaty Regarding
Status of Their Forces, T.I.A.S. No. 2846,
vides in pertinent part.

1. Subject to the provisions of this Art

(a) The military authorities of the se
ing State shall have the right to exer
within the receiving State all criminal
disciplinary jurisdiction conferred on tl
by the law of the sending State over all
sons subject to the military law of that St

(b) The authorities of the receiving S
shall have jurisdiction over the members
a force or civilian component and their
pendents with respect to offences commit
within the territory of the receiving State
punishable by the law of that State.

* * * * *

3. In cases where the right to exercise ju
diction is concurrent the following rules sh
apply:

(a) The military authorities of the send
State shall have the primary right to exer
jurisdiction over a member of a force or o
civilian component in relation to—

(i) Offences solely against the property
security of that State, or offences solely agai
the person or property of another member

the force or civilian component of that State or of a dependent;

(ii) Offences arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

* * * * *

5. (a) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(c) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6. (a) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(b) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

* * * * *

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

(a) To a prompt and speedy trial;

(b) To be informed, in advance of trial, of the specific charge or charges made against him;

(c) To be confronted with the witn
against him;

(d) To have compulsory process fo esses
taining witnesses in his favour, if the
within the jurisdiction of the receiving r ob-

(e) To have legal representation of hi are
choice for his defence or to have free tate;
sisted legal representation under the c own
tions prevailing for the time being in th as-
ceiving State; ondi-

(f) If he considers it necessary, to ha e re-
services of a competent interpreter; and

(g) To communicate with a represen e the
of the Government of the sending Stat
when the rules of the court permit, t ative
such a representative present at his tria and,
have

* * * * *

The Resolution of Ratification, with Re
tions, 99 Cong. Rec. 8780, as Agreed to
Senate on July 15, 1953, 99 Cong. Rec. 883erva-
vides in part: y the
pro-

* * * * *

In giving its advice and consent to r
tion, it is the sense of the Senate that:

1. The criminal jurisdiction provis tifica-
Article VII do not constitute a preced
future agreements; ns of

2. Where a person subject to the t for
jurisdiction of the United States is to
litary
tried

by the authorities of a receiving state, under the treaty the commanding officer of the Armed Forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

3. If, in the opinion of such commanding officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall request the authorities of the receiving state to waive jurisdiction in accordance with the provisions of paragraph 3 (c) of article VII (which requires the receiving state to give "sympathetic consideration" to such request), and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the executive branch to the Armed Services Committees of the Senate and House of Representatives;

4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving state will attend the trial of any such person by the authorities of a receiving state under the agreement, and any failure to comply with the

provisions of paragraph 9 of article VII of the agreement shall be reported to the commanding officer of the Armed Forces of the United States in such state who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the executive branch to the Armed Services Committees of the Senate and House of Representatives.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1959 330725